TEXAS REGISTER

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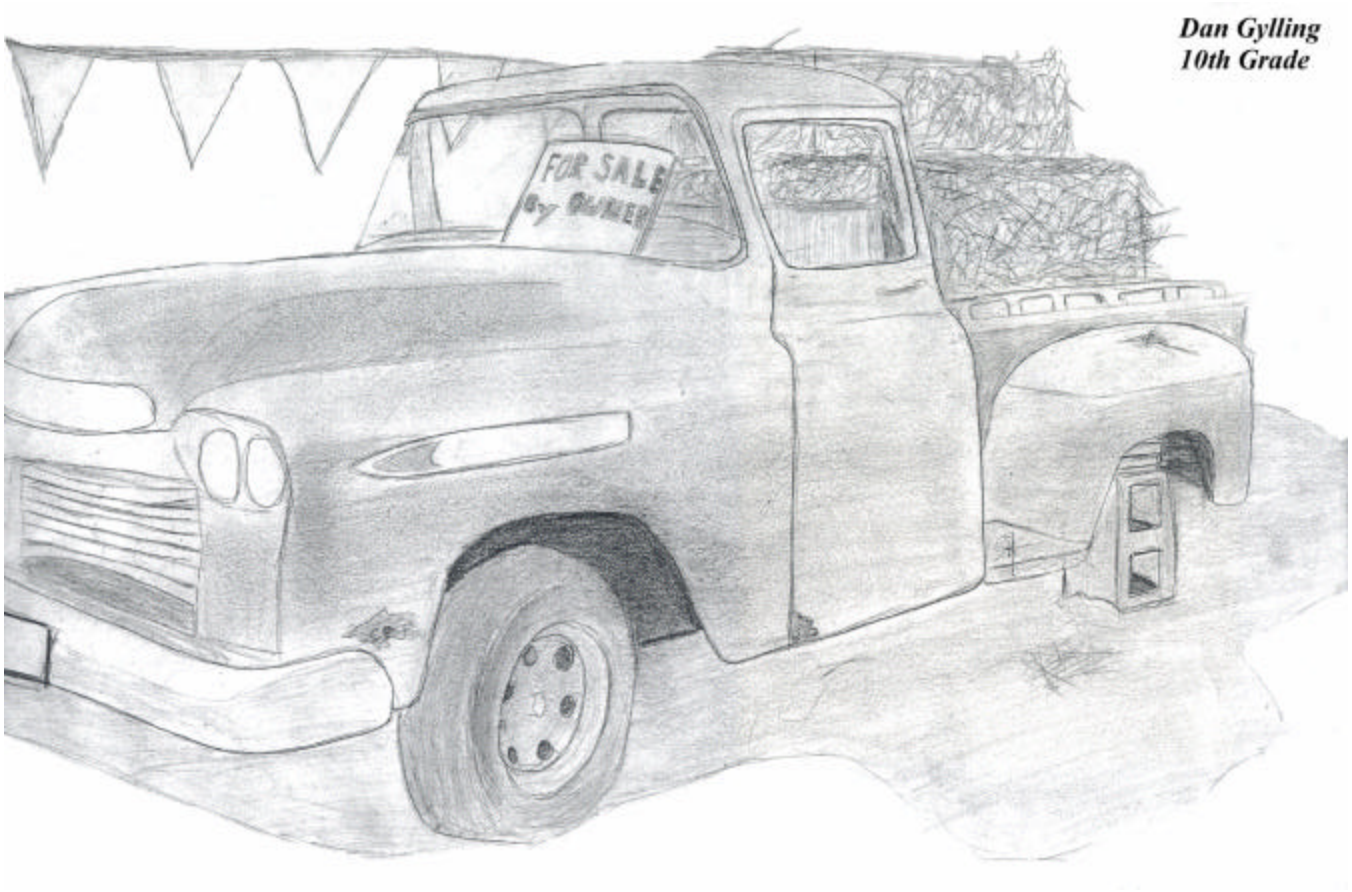

Dan Gylling
10th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Texas Department of Public Safety

Public Utility Commission of Texas

Texas Department of Savings and Mortgage Lending

Texas Department of Transportation

Texas Water Development Board

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0516-GA

Requestor:

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether delinquent property taxes and other general obligations that have not been reduced to judgment constitute "debt" for purposes of sections 154.045 and 262.0276, Local Government Code

Briefs requested by September 15, 2006

RQ-0517-GA

Requestor:

The Honorable James L. Keffer

Chair, Committee on Ways and Means

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a county may require an overweight vehicle to obtain an operating permit in addition to that required by the Department of Transportation

Briefs requested by September 18, 2006

RQ-0518-GA

Requestor:

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether the Texas Department of Criminal Justice may adopt a rule requiring mandatory HIV testing for all new inmates

Briefs requested by September 18, 2006

RQ-0519-GA

Requestor:

The Honorable Kim Brimer

Chair, Committee on Administration

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether chapter 2151, Occupations Code, the Amusement Ride Safety Inspection and Insurance Act, applies to cities that install slides at municipal swimming pools

Briefs requested by September 18, 2006

RQ-0520-GA

Requestor:

The Honorable Mike Krusee

Chair, Committee on Transportation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a municipality violates section 617.002, Government Code, by reorganizing and meeting with a labor organization as the sole representative of a designated group of employees

Briefs requested by September 18, 2006

RQ-0521-GA

Requestor:

The Honorable Mark F. Pratt

Hill County Attorney

Post Office Box 253

Hillsboro, Texas 76645

Re: Whether a county may improve a subdivision road under the authority of a statute other than chapter 253 of the Transportation Code

Briefs requested by September 18, 2006

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200604607

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 23, 2006

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-536. The Texas Ethics Commission has been asked to consider whether an incorporated statewide organization with incorporated local chapters may invite legislators and other elected officials to address the organization's membership regarding the issues of interest to the membership. The request letter states that the elected officials the organization intends to invite have "insight into the legislative proposals that may impact the organization and its members." The request letter states that the intent of the organization is not to make a political contribution but rather to "educate" its membership by directly presenting the views of the state policymakers on relevant issues. The request letter also states that some of the officials may have an opponent on the upcoming ballot and asks whether the organization is required to invite the opponent.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200604380
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: August 21, 2006

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 10. SEED CERTIFICATION STANDARDS

SUBCHAPTER J. SEED POTATO STANDARDS

4 TAC §§10.40 - 10.50

The Texas Department of Agriculture (the department) and the State Seed and Plant Board (the Board) propose new §§10.40 - 10.50, concerning standards for seed potato. The new sections are proposed to establish limitations of generations, bulk sales labeling fees and additional requirements for certification of seed potato. The department is the certifying agency in the administration of the Seed and Plant Certification Act, and is charged with administering and enforcing the standards adopted by the Board.

Ed Price, Seed Quality Branch Chief, has determined that for the first five-year period the new sections are in effect there will be an increase of state revenue of approximately $4,000 per year due to fees collected for field inspections. There will be no fiscal implications for local government as result of enforcing or administering the new sections.

Mr. Price also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be a supply of certified seed potato materials in a form that will allow participation in the certification program. For the first five-year period the new sections are in effect, the anticipated economic cost to persons and small businesses that are required to comply with the sections, as proposed, could be an estimated cost increase of up to $200 per year per individual, which includes a per field inspection fee of $25 and an acreage fee of $6 per acre.

Comments on the proposal may be submitted to Ed Price, Seed Quality Branch Chief, at the Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest and the Texas Agriculture Code §12.016, which provides the department with the authority to adopt rules for administration of the code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.40. Application and Amplification of General Certification Standards.

(a) The general requirements as adopted by the State Seed and Plant Board, are basic standards and, together with the following specific standards, constitute the standards for certification of seed potatoes.

(b) In addition to the definitions listed in §10.1 of this title (relating to Definitions), the following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Internal discoloration--Any type of necrosis, stem-end browning, internal brown spot or other similar types of discoloration not visible externally, except blackheart.

(2) Mass or straight planting--As opposed to tuber-unit planting. May refer to whole or cut seed planted in a conventional manner.

(3) Potato lot--A field, or the potatoes harvested therefrom.

(4) Seed potatoes--The vegetatively propagated tuber or portion of tuber used for reproduction of the potato rather than true seed that is sexually produced from the potato flowers.

(5) Soft rot or wet breakdown--Any soft, mushy, or leaky condition of the tissue.

(6) Tuber-unit field--A field that is planted by tuber-unit method and from which entire units are rogued if any plant in a unit is found to have virus disease.

(7) Tuber-unit planting--A method of dropping two or more seed pieces from one tuber consecutively in a row.

(8) U.S. export seed potatoes--Potatoes that meet the requirements, disease tolerances and grade standards for international export as listed under the UNITED STATES EXPORT STANDARDS FOR SEED POTATOES; Appendix P - USDA Export Certification Manual as revised.

(9) U.S. standards for seed potatoes--The grades of potatoes as defined and issued by the United States Department of Agriculture (USDA).

§10.41. General Requirements.

(a) Any disease or other condition seriously affecting seed potato quality, and its ability to sprout and grow normally that is not mentioned in these rules, may be cause for the department to reject a lot entered for certification.

(b) Any lot of seed potatoes may be rejected by the department at any time such lot is found not to meet the certification standards.

(c) The applicant is responsible for all laboratory virus testing. All laboratory virus tests must be from a laboratory approved by the department.

(d) All potato fields in the farming operation that are eligible and entered for certification must be physically separated from those potato fields on the farming operation not entered for certification. In addition, all equipment and storage bins used in the farming operation utilized for the purpose of certified seed production must be cleaned and disinfected prior to being used to plant, harvest, cultivate, spray or store certified seed potatoes.

(e) All potato fields entered for certification must be adequately isolated by a minimum of 60 feet from adjacent fields not entered for certification or lots rejected for serious seed-borne diseases during the current season. Potato fields entered for certification not meeting isolation requirements will be reduced in acreage accordingly.

(f) Each lot of seed potatoes in storage must be adequately separated from other potatoes to prevent mixture or contamination.

(g) Each lot of certified seed potatoes must be kept in an isolated storage bin that contains only potatoes approved by the department. Potatoes from seed lots rejected for certification due to bacterial ring rot will not be allowed under any circumstances.

(h) New sacks must be used if seed potatoes are harvested, stored or marketed in sacks unless they are shipped in bulk.

§10.42. Labels, Bulk Certificates, Seals.

(a) Labels or bulk certificates will be issued by the department, only to the applicant or his agent. No mutilation of labels or bulk certificates, by writing or marking over, or otherwise altering original information printed thereon, will be permitted. The responsibility of proper use of labels and bulk certificates is placed on the person to whom such articles have been issued.

(b) A seal shall be placed on the conveyance doors of bulk shipment containers identified by a bulk certificate.

§10.43. Grades and Grade Inspection.

(a) All certified seed potatoes must be graded to conform with the U.S. standard grades and sizes for seed potatoes unless a signed waiver of grade inspection has been obtained from the purchaser as outlined in subsections (d) or (g) of this section.

(b) All seed potatoes must be shipped under labels or bulk certificates that represent the grade to which they have been sorted. Potatoes failing to meet the grade specified on the label or bulk certificate shall be:

(1) resorted to meet the grade requirements;

(2) re-labeled with new labels or re-issued a new bulk certificate representative of the grade of the potatoes; or

(3) the labels must be removed.

(c) All shipments must be inspected by a Federal/State inspector at the time of shipment. The Federal/State Inspection Service is responsible for inspecting seed shipments to verify that proper grade standards have been met. If a "zero tolerance" disease such as bacterial ring rot or root knot nematode is suspected or any other condition which may disqualify a seed lot from certification is discovered during the inspection, the department shall be notified by the applicant so additional procedures can be implemented to identify and confirm the true nature of the problem.

(d) Each lot sold shall be inspected by a Federal/State inspector or a waiver of grade inspection must be secured from the purchaser at the time of delivery or acceptance.

(e) All certified seed potatoes marketed in bags and carrying a label must meet the highest grade requirements indicated by either the bag or the colored label. U.S. No. 1 seed grade is not strictly a U.S. No. 1 grade, and may not be marketed in bags branded as U.S. No. 1.

(f) All certified seed potatoes exported outside of the U.S. shall meet the U.S. EXPORT "SEED POTATOES" standards for the given generation and/or class being shipped.

(g) Certified seed potatoes marketed expressly for use as garden seed and shipped in quantities less than 10 cwt per cultivar or clone within the same load shall be exempt from Federal/State grade inspection. However, a waiver of grade inspection must be secured from the purchaser at the time of delivery or acceptance.

§10.44. Field and Storage Inspections; Fees.

(a) Each field entered for certification shall receive at least two inspections. At the discretion of the department additional inspections may be conducted on any field. Each inspection shall consist of a visual examination of the growing plants in each field. At least 100 plants per acre shall be counted on the first and second inspections to determine disease percentages. When individual seed lots consist of less than 10 acres, at least 1000 plants or 100% of the lot shall be counted. Additional inspections shall consist of a visual survey of plants that normally does not include a plant count unless a disease condition or other problem is discovered that requires a numerical estimate of affected plants. All disease diagnoses or problem identifications shall consist of visual examination of the plants in question, except in the case of latent viral infections, where a serological test such as ELISA may be used to supplement the visual inspection. In the case of bacterial ring rot caused by *Clavibacter michiganensis* subsp. *Sepedonicus*, the visual diagnosis shall be supplemented with the gram stain procedure as described by Glick, Ark, and Racicot in the *American Potato Journal*, Vol.21:311-14, 1944 and an appropriate laboratory serological test as outlined in the "Protocol for Indexing and Confirmation of Diagnosis of Bacterial Ring Rot of Potato" (accepted 12/99 by the NPC U.S. Seed Potato Certification Subcommittee). Inspections of at least 4600 plants or 100% of the lot shall be conducted during the time that bacterial ring rot symptoms, if expressed, should be visible. When seed lots are rejected prior to final field inspection for reasons other than bacterial ring rot, such lots may be re-inspected.

(b) Each storage building shall be inspected following completion of harvest and prior to removal of the certified seed potatoes to determine the suitability of the structure and bins to provide reasonable security against contamination and/or cultivar mixing. The applicant shall be responsible for proper disinfection of the storage building, bins and equipment utilized. Also, the applicant shall identify the location of each seed lot by means of a label attached to the storage bin. The label information shall include the applicant's name, seed lot number, cultivar, and number of hundredweight stored. In the event two or more seed lots are combined, the status of the entire lot shall be downgraded to the lowest generation and class concerned, and if a varietal mix has occurred, all seed lots which have been mixed shall be denied certification unless the varieties are capable of being visually separated and sorted to the satisfaction of the department.

(c) Any lot of seed potatoes proven infected with bacterial ring rot will be rejected for certification regardless of the time or place of inspection. An applicant who has any lot of potatoes rejected because of bacterial ring rot will have an asterisk (*) printed in front of his seed lot number(s) on certified labels and bulk certificates. Any seed lot with an asterisk (*) in its designation shall not be eligible for re-certification. However, any seed lot identified by an asterisk (*) may be replanted for certification the following year on the original applicant's farm.

(d) In the event a farming operation has more than one field planted from the same seed lot source and bacterial ring rot is discovered in at least one of the fields, the remaining fields (planted with the same seed source) will be automatically rejected unless the observed pattern of infected plants provides clear evidence that the cause of contamination was equipment used exclusively in connection with seed cutting, handling and/or planting the seed lot in question.

(e) Field inspection may be refused and seed lots rejected for certification if the field cannot be properly inspected due to:

(1) excess weeds;

(2) hail or frost damage;

(3) damage caused by insects or disease;

(4) chemical injury; or

(5) any other condition that prevents visual identification of diseases or other factors affecting seed quality and performance. Any lot rejected due to hail or frost may be retained by the original applicant for re-certification on his farm for the following year, provided post harvest test requirements are met.

(f) Seed fields shall be marked in a manner that allows for the location of all lots.

(g) An applicant of a rejected field may appeal the decision of the department by making such appeal in writing to the State Seed and Plant Board. Such appeal must be received within one week following the inspection and must state clearly the reason for the appeal and show cause why a re-inspection should be given. Roguing or sorting will not be permitted between the time of rejection and the appeal.

(h) Fees.

(1) Application and inspection fees, as shown in Table I of §10.13 of this title (relating to Inspection fees for Certification), are required to be paid at the time of application.

(2) Filing of applications. In addition to the requirements of §10.12 of this title (relating to Number and Time of Field Inspections), all applications for inspection must be filed with the department at least 30 days prior to flowering.

§10.45. Post Harvest Testing.

(a) Test required. All Texas certified seed potatoes must be subjected to a post harvest test and meet prescribed standards to be eligible for re-certification.

(b) Planting of samples. Due to the inability to detect certain virus diseases at all times under field conditions, samples from seed lots eligible for re-certification shall be planted where these diseases can be observed in the greenhouse or in the south during the winter months.

(c) Selection of samples. Samples are to be selected so as to represent all field areas of any given seed lot. Tubers must be in the 2-3 ounce size range.

(d) Post Harvest Test.

(1) Generation 1 (stocks for sale only). Not less than 25 tubers or 1.0% of the population, not to exceed 400 tubers in a given seed lot, shall be sampled. The applicant may elect to have laboratory testing for leafroll and potato virus Y prior to vine kill conducted in lieu of a southern post harvest test at similar sampling rates. The department will determine the actual number of tubers selected.

(2) Generation 2. In any given seed lot, not less than 100 tubers or 1.0% of the population, not to exceed 400 tubers or the levels established for Generations 3-6, shall be sampled.

(3) Generations 3-6.

(A) 400 tubers per seed lot for lots up to 40 acres.

(B) 800 tubers per seed lot for lots 41-80 acres.

(C) An additional 200 tubers will be required for each 40 acres or portion thereof beyond 80 acres.

(D) Exceptionally small lots - Not less than 100 tubers or 1.0% of the population.

(e) Substitutions. Under certain circumstances a greenhouse grow-out will be substituted for the field test to meet eligibility requirements for re-certification. Sample size shall be 200 tubers of 2-3 ounce size range per seed lot.

(f) Post harvest text sample. Representative post harvest test samples of suitable size will be collected by the applicant. The applicant must deliver the samples to a designated assembly point. The samples of seed tubers from all lots eligible for re-certification are grown in a post harvest test either in the greenhouse or in a southern test plot during the winter months to observe the plants for evidence of disease spread or chemical damage that may have occurred the previous growing season. Each plant in each seed lot sample is visually observed for disease symptoms. The stand count in each lot is recorded and disease content is calculated by dividing the number of diseased plants observed by the total number of tubers planted. Seed lots found to contain tuber-borne diseases in excess of prescribed tolerances will be ineligible for certification the following season. If the tubers of any seed lot sample submitted for post harvest testing do not produce plants of adequate size due to dormancy problems or the plants are destroyed due to weather, pests or other unforeseen problems at the test plot site, the respective seed lots will be evaluated by the department for re-certification eligibility on the basis of appropriate field inspection data.

(g) Post Harvest Testing Disease Tolerances. In addition to the general requirements for post harvest testing, the following special requirements must be met by each generation and class of seed to be re-certified:
Figure: 4 TAC §10.45(g)

§10.46. Out-of-State Seed Stocks.
Any potato cultivar or numbered clone brought in from out-of-state whose disease symptom expression resulting from infection with the ring rot bacterium (*Clavibacter michiganensis* subsp. *Sepedonicus*) or potato leafroll virus is unknown under Texas growing conditions shall be eligible for certification under the following conditions:

(1) If test results demonstrate adequate symptom intensity, that will normally permit inspectors to visually detect the presence of these diseases under field conditions, the seed lot will be allowed to proceed through the certification process and be approved provided other requirements are met. Testing to determine disease reaction will be concurrent with field production of the cultivars or numbered clones in question. Applicants who intend to enter such stocks in the current year's certification program must provide a minimum of 75 tubers of each cultivar or numbered clone to the department by May 1st of any given growing season.

(2) In the event disease expression is totally latent or mild to the degree that prevents detection during field inspection an affidavit must be signed by the buyer that acknowledges the limitations to disease detection.

§10.47. Laboratory Virus Testing Required.
Laboratory virus testing is required as follows:
Figure: 4 TAC §10.47

§10.48. Special Requirements for Limited Generation Seed Potatoes.

(a) Identification requirements. Each lot of seed potatoes entered for certification shall be identified as Limited Generation, Non-Generation Certified or Experimental. Experimental seed must be accompanied by written authorization from the breeding program from which the numbered potato selections originate (germplasm release notice). Each seed lot must meet all General Requirements and applicable Special Requirements provided herein. Any seed lot brought into the Texas limited generation system from out-of-state will have its entry level determined by the State Seed and Plant Board. Listed below are the various steps that any given seed stock will pass through in the Limited Generation System:

(1) Nuclear (Lab and/or greenhouse produced)

(2) Generation 1 (1st year in field)

(3) Generation 2 (2nd year in field)

(4) Generation 3 (3rd year in field)

(5) Generation 4 (4th year in field)

(6) Generation 5 (5th year in field)

(7) Generation 6 (6th year in field)

(b) Seed sources and disease tolerance standards.

(1) Nuclear.

(A) Seed source. Seed must be from single hill field selections obtained from certified seed of Generation 5 or earlier generations or from a source approved by the department.

(B) Disease symptoms. A seed must be free of all visible disease symptoms. Testing for *Clavibacter michiganensis* subsp.*sepedonicus* will be handled as outlined in the "Protocol for Indexing and Confirmation of Diagnosis of Bacterial Ring Rot of Potato" (accepted 12/1/99 by the NPC U.S. Seed Potato Certification Subcommittee).

(C) Mother plants. Those units (plantlets) initiated from field selected plants or tubers. All mother plants to be used for subsequent propagation must be tested and proven negative for the following disease organisms: *Clavibacter michiganensis* subsp. *sepedonicus, Erwinia carotovora* subsp. *atroseptica* and *carotovora*, potato viruses X, S, Y, A and M (hereafter referred to as PVX, PVS, PVY, PVA and PVM), PVM-ID, Potato Latent virus, potato leafroll virus (PLRV), and potato spindle tuber viroid (PSTV).

(D) Nuclear stocks. Those stocks derived from mother plants. These include material used in maintaining a clone bank, plantlets increased for use in production of in-vitro microtubers, microtubers, plantlets increased for use in field production of tubers, and minitubers produced in a greenhouse.

(E) Clone bank. The clone bank in-vitro stocks will be tested on an annual basis and found negative for PVX, PVS, PVY, PVM, *Clavibacter michiganensis* subsp. *sepedonicus*, and *Erwinia carotovora* subspp. *atroseptica* and *carotovora*.

(F) Plantlet/greenhouse production. Representative samples of micropropagated materials for use in field or greenhouse plantings, of not less than 10 units and not to exceed 1.0% of the planting stock, must be tested for PVX and PVS to verify that such material still tests negative for these pathogens. In the case of greenhouse production, the testing will take place between the time of first and second visual inspections. In the event that trace amounts of virus are detected, the applicant will be informed of the results and have the seed lot in question classified accordingly upon completion of the Generation 1 field-testing. Greenhouse stocks will have an additional test for the presence of *Erwinia carotovora* subspp. and *Clavibacter michiganensis* subsp. *sepedonicus (Cms)* completed at the same rate as above on the minitubers. A positive test for presence of *Erwinia carotovora* subspp. shall result in downgrading of the stocks to Generation 2 for sale outside the originating applicant's program. However, the contaminated stocks may be replanted for certification and entered as Generation 1 on the original applicant's farm. Under certain circumstances an additional test for *Phytophthora infestans* will be performed on the minitubers brought in for testing. A positive result for either *P. infestans* or *Cms* will result in rejection of the lot (s) from certification.

(2) Generation 1.

(A) Seed source must be Nuclear stocks approved by the State Seed and Plant Board. All Nuclear seed stocks must have a Certificate of Origin, label, or similar document available for inspection by the department prior to being accepted into the certification program.

(B) Tubers must be planted in identifiable family units.

(C) Each family unit will be lab tested for PVX and PVS and, at the applicant's option for potato leafroll virus. At least 1.0% of the plants, not to exceed 1000 plants, must be sampled. If there are indications that viral infection has taken place, then, at the applicant's option, at least one leaflet from each plant in the infected family unit will be sampled to identify and aid in removal of the infected plants, or blocks of samples will be tested to determine the extent of the infection. If the applicant refuses additional testing or the level of virus found in the stocks is too high for removal of infected plants, the lot will be downgraded to the next appropriate generation level. Trace PVX or PVS infections, as determined by the department, will not result in downgrading of the lot if replanted for certification on the original applicant's farm the following year.

(D) Must meet Class A requirements or will be downgraded to next appropriate generation level.

(3) Generation 2.

(A) Seed source must be Nuclear or Generation 1 and family units may be maintained.

(B) Representative samples of at least 200 leaflets per acre will be tested for PVX and, at the applicant's option, tested for PVS.

(C) Must meet Class A or B requirements or will be downgraded to Generation 3.

(4) Generation 3.

(A) Seed source must be Generation 2 or earlier generations.

(B) Representative samples of at least 20 leaflets per acre and not less than 100 leaflets from any given seed lot will be tested for PVX and, at the applicant's option, tested for PVS.

(5) Generation 4. Seed source must be Generation 3 or earlier generations.

(6) Generation 5. Seed source must be Generation 4 or earlier generations.

(7) Generation 6.

(A) Seed source must be Generation 5 or earlier generations.

(B) May be labeled and sold as Generation 6 but is not eligible for certification the following year.

(c) Isolation for Limited Generation Seed. Field Isolation.

(1) Generations 1-3 potatoes must be separated from Generations 4-6, Non-Generation Certified and Experimental lots by a minimum distance of at least two blank row widths.

(2) Storage Isolation.

(A) Generation 1 potatoes must be isolated from all other certified potatoes in the same storage building. Emphasis should be directed toward intensive sanitation and physical separation by solid wall partitions.

(B) All certified seed lots must be kept in a storage bin that contains only seed entered for certification. Non-certified stocks and potatoes rejected due to blackleg or zero tolerance diseases such as bacterial ring rot will not be allowed in the storage bin; the presence of such potatoes will result in rejection of the certified seed lots present.

(d) Field Inspection Tolerances for Limited Generation Seed.
Figure: 4 TAC §10.48(d)

(e) Sale of Nuclear Material from Private or Applicant Operated Laboratories.

(1) Rules governing the seed sources and disease tolerance standards for Nuclear stocks must be followed. All stocks not initiated in the year of production or sale must have an annual testing for the presence of disease organisms and a grow-out or other test approved by the department to verify trueness to type and varietal identification.

(2) Accurate and complete accession records must be kept on all nuclear stocks and be available for review if requested by the department. Information should include year of initiation into tissue culture, source of the line, general increase data, pertinent field performance characteristics, and disease testing history.

(3) All greenhouse-produced stocks (minitubers) shall have at least two inspections during their growth. At the time of the second inspection, prior to vine death, plants will be examined to verify trueness to type and varietal identification. Minitubers will be examined in storage for any apparent problems prior to shipment or subsequent field growth.

(4) All nuclear stocks must be kept in a clone bank with accurate identification on each tube or vessel. These stocks shall be kept in the clone bank no less than one year from the date of any sale.

(5) Nuclear stocks sold will not be labeled with an official label or bulk certificate used on other certified seed stocks. Instead, there will be an affidavit included with the nuclear material which carries information relating to its accession, disease testing records, varietal identification, numbers sold, and product identity (i.e., minitubers, tissue culture plantlets, microtubers, etc.). The stocks will be recorded as eligible for certification as Generation 1 under these rules and regulations.

§10.49. Special Requirements for Non-Generation Seed

Potatoes. Seed identified as Non-Generation Certified (NGC) is intended to provide limited opportunity for a applicant to produce certified stocks of cultivars for which micropropagated laboratory-tested seed sources are temporarily not available. Applicants who intend to produce NGC seed must verify to the Department prior to April 1st of any given growing season that the cultivar in question is not available from a Limited Generation seed program, and furthermore have each request reviewed and approved by the State Seed and Plant Board. However, any prospective seed lots must have been post harvest tested and meet qualifications for re-certification. NGC seed lots will be inspected and classified according to the disease tolerances and all of the applicable Rules and Regulations established for Generation 6. These stocks will be identified in the Seed Directory and when sold will be inspected for grade and properly identified with labels or bulk certificates. The symbols "NGC" shall be printed on the labels and bulk certificates to denote their status.

§10.50. Grade Standards for Certified Seed Potatoes.

(a) The following grade standards apply to all certified seed potatoes.
Figure: 4 TAC §10.50(a)

(b) Blue Label Grade shall consist of potatoes which meet the requirements of the disease tolerances and grade standards previously listed for Certified Seed Potatoes. In addition, they shall be graded to conform to the U.S. No. 1 seed potatoes grade as defined under U.S. Standards for Grades of Seed Potatoes with the following exceptions:

(1) Not more than 1% of the potatoes shall be damaged by dry rot.

(2) Size shall be 1-1/2" to 12 oz. unless a smaller maximum is specified on the label or bulk certificate.

(3) Not more than 3% of the potatoes in any lot may be below the specified size and, in addition, not more than 8% may be above the specified size.

(4) Physiological internal pigmentation shall not be considered a grade factor.

(c) Yellow Label Grade shall consist of potatoes which meet the requirements of the disease tolerances and grade standards previously listed for Certified Seed Potatoes. This grade is intended to provide the buyer and seller an opportunity to establish certain mutually agreed upon specifications not allowed in the Blue Label Grade. The potatoes must be graded to conform to the U.S. No. 1 seed potatoes grade as defined under U.S. Standards for Grades of Seed Potatoes with the following exceptions:

(1) Soft rot shall not exceed 1%.

(2) Tuber size shall be specified on the label or bulk certificate. Tolerances for specified size limits: Not more than 3% of the potatoes in any lot may be below the stated minimum and, in addition, not more than 10% may be above the stated maximum.

(3) Tubers shall not be seriously damaged by external defects, or seriously misshapen unless otherwise specified, and shall meet the tolerances for a U.S. No. 2 Grade.

(4) Physiological internal pigmentation shall not be considered a grade factor.

(d) The application of grade and size tolerances shall be as outlined in the United States Standards for Potatoes, §51.3003.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 16, 2006.

TRD-200604347
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 463-4075

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CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

4 TAC §19.3

The Texas Department of Agriculture (the department) proposes an amendment to §19.3, concerning inspection and testing fees. The amendment is proposed to add a nematode laboratory analysis fee and to change the section title. In certain cases, a phytosanitary certificate can only be issued by the department after evidence is available that the premises or media where plants are grown are free of quarantined nematode species. A sample is collected from the premises, media or article and tested for the presence of a quarantined nematode species by a specialist or laboratory under contract with TDA for this purpose. It is necessary for the department to charge $30 per sample to recover the costs associated with nematode laboratory analysis.

Dr. Awinash Bhatkar, Coordinator for Plant Quality Programs, has determined that for the first five-year period the amended section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section. There will be an estimated increase in revenue in the amount $7,800 per year for the next five years due to the proposed nematode analysis sample fee. There will be no fiscal implications for local government as a result of enforcing or administering the amended section.

Dr. Bhatkar also has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be to mitigate the risk of introduction of a quarantined pest from infested areas to free areas. There will be a $30 per sample cost to micro businesses, small businesses or persons required to comply with the amended section.

Comments on the proposal may be submitted to Awinash Bhatkar, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment to §19.3 is proposed under the Texas Agriculture Code (the Code), §12.018 which authorizes the department to collect fees for laboratory analysis; the Code, §12.0144 which provides that the department shall set fees in an amount which offsets, when feasible, the direct and indirect state costs of administering its regulatory activities; and the Code, §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The Texas Agriculture Code, Chapter 12 and Chapter 71 are affected by the proposal.

§19.3. Inspection <u>and Testing</u> Fees.

(a) The department shall collect an inspection fee of $30 for the issuance of a state phytosanitary or a growing season inspection certificate and $50 for a federal phytosanitary certificate. Fields designated for genetic identity by the department are exempt from the fee. <u>In addition, the department shall collect $30 per sample for nematode laboratory analysis.</u>

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200604351
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 153. HOME EQUITY LENDING

7 TAC §153.13

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly propose an amendment to interpretation §153.13, relating to home equity lending under Texas Constitution, Article XVI, §50(a)(6).

Texas Constitution, Article XVI, Section 50 ("Section 50"), sets out the only permissible encumbrances on a homestead. Prior to 1998, Section 50 permitted liens on homestead property for the purposes of purchase money, taxes, an owelty of partition, the refinance of a lien, including tax liens, and home improvements. Effective January 1, 1998, Section 50 was amended to authorize home equity loans, permitting a home owner to obtain a loan secured by a lien on the homestead, without restricting how the owner can use the loan proceeds. Section 50 has since been amended in 1999, 2001, 2003, and 2005 to further address aspects of home equity lending. Section 50 addresses only the elements necessary to create a valid lien on a homestead. Other statutes and constitutional provisions must also be consulted to fully evaluate the legality under Texas law of credit transactions involving the homestead.

The commissions are separately and independently charged with interpreting Sections 50(a)(5) - (7), (e) - (p), and (t) of the Constitution, see Texas Finance Code, §§11.308 and 15.413, and Texas Constitution, Article XVI, Section 50(u). The commissions seek to jointly exercise their authority to interpret Section 50 in order to promote consistency and better support the confidence of homeowners and lenders transacting home equity loans in compliance with Section 50. In addition, the commissions interpret the extent of their interpretive authority to include not only determinations of the explicit meaning of words and terms in Section 50, but also to encompass "filling in the gaps" with respect to material matters that are inadequately addressed in Section 50, including possible addition of further details to the extent the commissions believe this to be necessary to fully implement the intent and purposes of Section 50.

Because of the significantly adverse consequences that can befall a lender who violates a provision of Section 50, clear and unambiguous guidance regarding the meaning of such provisions supports the stability of the credit markets. This stability benefits consumers by ensuring that home equity loans are as widely available to Texas homeowners as possible. Availability, cer-

tainty, and competition result in reducing the overall transaction cost to consumers for equity loans. To that end, the commissions have previously adopted interpretations codified to 7 TAC Chapters 151 and 153. These interpretations are intended to not only construe the actual language of the Constitution, but also to provide a practical framework for home equity lending that reflects the constitutional language and the intent of the legislature and the voters. The commissions interpret the Constitution in harmony with other statutes and provisions that govern loans and other credit transactions to ensure consistency in the application of law.

Concerns have been raised that several jointly adopted interpretations are potentially ambiguous. Consequently, the Finance Commission and the Credit Union Commission recently revised and re-adopted §153.13, the home equity lending interpretation concerning the timing of preclosing disclosures. This new interpretation, along with two others, was published in the June 23, 2006, edition of the *Texas Register* (31 TexReg 5080).

Following adoption, a typographical error was discovered in §153.13 that could lead to mistaken conclusions regarding the intent of this interpretation. Specifically, the word "or" between §153.13(3)(B)(i) and (ii) should obviously have been the word "and." The purpose of this amendment is to correct this typographical error. In brief, the requirements of both clauses (§153.13(3)(B)(i) and (ii)) must be met to establish the *de minimis* good cause standard that permits an owner to consent to delivery of a modified disclosure on the date of closing.

Texas Constitution, Article XVI, Section 50(a)(6)(M)(ii), requires a lender to provide an owner with a preclosing disclosure of fees, costs, points, and charges at least one day prior to closing a home equity loan. Initial delivery of, or changes to, a timely delivered disclosure are not permitted after that time unless good cause exists and the owner consents. Generally, revised §153.13 provides that good cause exists to deliver a modified disclosure on the date of closing if the variance in total costs is insignificant (a *de minimis* increase) under a specified formula (see §153.13(3)(B)(i)).

However, an insignificant change in total costs can be misleading if it conceals material but offsetting changes in individual fees, costs, points, and charges. Because variances of this nature demand more thoughtful analysis and consideration, the *de minimis* good cause standard requires the variance in any individual fee, cost, point, or charge to also be insignificant under the formula provided (see §153.13(3)(B)(ii)).

The obviously erroneous use of the term "or" in lieu of "and" between the two clauses that define the *de minimis* good cause standard does not mean that satisfying only one of these two conditions is sufficient to meet the *de minimis* good cause standard, and the commissions will not endorse or support such a reading.

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the amendment to the interpretation is in effect there will be no fiscal implications for state or local government as a result of administering the interpretation.

Commissioner Feeney and Commissioner Pettijohn also have determined that for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of the proposed amendment will be to support the stability of the credit markets and ensure that equity loans are widely available to Texas homeowners, through the creation of reliable and accurate standards and guidelines.

There is no anticipated cost to persons who are required to comply with the amendment as proposed. There will be no adverse economic effect on small or micro businesses.

Written comments on the proposed amendment may be submitted to Harold Feeney, Credit Union Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to commissioner@tcud.state.tx.us or sealy.hutchings@occc.state.tx.us. To be considered, a written comment must be received on or before the 40th day after the date the proposed amendment is published in the *Texas Register*. At the conclusion of the 40th day after the proposed amendment is published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The amendment to §153.13 is proposed pursuant to Texas Finance Code, §§11.308 and 15.413, which separately and independently authorize each commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(6) is affected by the proposed amendment to the interpretation.

§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii).

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing.

(1) A lender may satisfy the disclosure requirement of this section by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.

(2) Bona fide emergency.

(A) An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing in the case of a bona fide emergency occurring before the date of the extension of credit. An equity loan secured by a homestead in an area designated by Federal Emergency Management Agency (FEMA) as a disaster area is an example of a bona fide emergency if the homestead was damaged during FEMA's declared incident period.

(B) To document a bona fide emergency modification, the lender should obtain a written statement from the owner that:

(i) describes the emergency;

(ii) specifically states that the owner consents to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of the owner's right to receive a final itemized disclosure containing all actual fees, points, costs, and charges one day prior to closing.

(3) Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

(A) Good cause to modify the preclosing disclosure or to receive a subsequent disclosure modifying the preclosing disclosure on the date of closing may only be established by the owner.

(i) The term "good cause" as used in this section means a legitimate or justifiable reason, such as financial impact or an adverse consequence.

(ii) At the owner's election, a good cause to modify the preclosing disclosure may be established if:

(I) the modification does not create a material adverse financial consequence to the owner; or

(II) a delay in the closing would create an adverse consequence to the owner.[;]

(iii) The term "de minimis" as used in this section means a very small or insignificant amount.

(B) At the owner's election, a de minimis good cause standard may be presumed if:

(i) the total actual disclosed fees, costs, points, and charges on the date of closing do not exceed in the aggregate more than the greater of $100 or 0.125 percent of the principal amount of the loan (e.g. 0.125 percent on a $80,000 principal loan amount equals $100) from the initial preclosing disclosure; and [~~or~~]

(ii) no [~~each~~] itemized fee, cost, point, or charge exceeds [~~does not exceed~~] more than the greater of $100 or 0.125 percent of the principal amount of the loan than the amount disclosed in the initial preclosing disclosure.

(C) To document a good cause modification of the disclosure, the lender should obtain a written statement from the owner that:

(i) describes the good cause;

(ii) specifically states that the owner consents to receive the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of the owner's right to receive a final itemized disclosure containing all fees, costs, points, or charges one day prior to closing.

(4) An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(5) The owner maintains the right of rescission under Section 50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

TRD-200604379

Leslie L. Pettijohn
Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 936-7640

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 21. HISTORY PROGRAMS

The Texas Historical Commission (THC) proposes to repeal §§21.1, 21.2 and 21.8, amend §§21.3, 21.6 and 21.7, and add new §21.10 in its History Programs chapter. The purpose of the repeals, amendments and new section is to update and clarify the criteria for administering the Official Texas Historical Marker Program under policies and program guidelines as adopted by the Texas Historical Commission.

F. Lawerence Oaks, Executive Director, has determined that, for the first five-year period the sections are in effect, fiscal implications for the state, based on an estimated 150 - 200 applications received per year, with an application fee of $100 per submission, would amount to approximately $15,000 - $20,000 per year as a result of enforcing or administering the sections. There will be no effect on local governments.

F. Lawerence Oaks also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is that individuals, organizations or county historical commissions desiring to preserve their local history through these programs increased opportunities to do so with the changes proposed. There is no adverse economic effect on small or micro businesses, or on businesses of any size, as a result of enforcing or administering the sections, because, although there is a cost associated with obtaining an Official Texas Historical Marker and registering a Historic Texas Cemetery, the programs are optional and businesses are not required to participate in them. The anticipated economic cost to persons who are required to comply with the proposed sections is $100 per application. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Cynthia Beeman at (512) 463-5854 in THC's History Programs Division. Written comments on the proposal may be submitted to Cynthia Beeman, History Programs Division, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Government Code, THC has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, THC is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER A. INTRODUCTION

13 TAC §21.1, §21.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Historical Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 442, which authorizes THC to adopt rules to carry out its programs.

The repeal implements the Government Code, §442.005 and §442.006.

§21.1. Object.

§21.2. Scope.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604298
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 936-4323

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13 TAC §21.3

The amendments are proposed under the Government Code, Chapter 442, which authorizes THC to adopt rules to carry out its programs.

The amendments implement the Government Code, §442.005 and §442.006.

§21.3. Definitions.

When used in this chapter, the following words or terms have the following meanings unless the context indicates otherwise:

(1) (No change.)

(2) Historical marker application. Historical marker application means a current version of the commission's *Official Texas Historical Marker Application Form* and all required supporting documentation as required in these rules, program guidelines, criteria and procedures adopted by the commission [~~§21.7 of this chapter (relating to Application Requirements)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604303
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 936-4323

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SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §§21.6, 21.7, 21.10

The amendments and new section are proposed under the Government Code, Chapter 442, which authorizes THC to adopt rules to carry out its programs.

The amendments and new section implement the Government Code, §442.005 and §442.006.

§21.6. Recorded Texas Historic Landmark Designation.

(a) The commission may award the Recorded Texas Historic Landmark (RTHL) designation to historic structures that meet criteria set forth in program guidelines, criteria and procedures adopted by the commission [~~this chapter~~].

(b) - (d) (No change.)

§21.7. Application Requirements.

(a) Any individual, group or county historical commission may apply to the commission for an Official Texas Historical Marker. The application shall include:

(1) (No change.)

(2) supporting documentation as provided in program guidelines, criteria and procedures adopted by the commission. [~~a comprehensive research paper on the topic under consideration that contains a narrative history including:~~]

[~~(A) an introduction with historical background and broad historical context of the topic under consideration; ~~]

[~~(B) a detailed chronological history that documents the complete history of the topic; and~~]

[~~(C) a concluding section that summarizes the history and addresses the significance of the topic;~~]

(3) an application fee in the amount of $100.00. [~~Reference notes. Facts contained in the research paper that cannot be assumed to be common knowledge shall be documented with reference notes, which can be footnotes, endnotes or parenthetical notes;~~]

[~~(4) Bibliography of sources cited. A bibliography is a list of all the sources used in researching the topic.~~]

[~~(A) for published sources, the bibliography shall include information on the author, title, publisher and date of publication. ~~]

[~~(B) for unpublished sources, the bibliography shall include a description and date of the document, and the location of the collection or record;~~]

[~~(C) for oral history sources, the bibliography shall include the name of the interviewer and the interviewee; the date of the interview; the relevance of the interviewee to the topic under consideration; a statement regarding existence and location of any related notes, transcripts and/or recordings;~~]

[~~(5) Map. A letter-size map indicating the proposed marker location;~~]

[~~(6) Photographs.~~]

[~~(A) For subject markers, the requirement is a current photograph of the proposed marker location.~~]

[~~(B) For Recorded Texas Historic Landmark markers, the photographic requirements are:~~]

[~~(i)~~ ~~at least one historic photograph of the structure under review;~~]

[~~(ii)~~ ~~one current photograph of each elevation of the exterior of the structure; and~~]

[~~(iii)~~ ~~additional photographs the commission staff may request to facilitate determination of a structure's eligibility for designation.~~]

[(C) For Historic Texas Cemetery markers, the requirements are:]

[(i) a current photograph of the proposed marker location;]

[(ii) at least one current photograph showing an overall view of the cemetery; and]

[(iii) photographs that document individual features referred to in the application's narrative history;]

[(7) Authorization. Permission is required for placement of the marker, as indicated by the signature of the property owner;]

[(8) County historical commission approval. The county historical commission (CHC) must approve the application history, content and documentation. If a county has no active CHC, the county judge's approval may be substituted; and]

[(9) Additional documentation.]

[(A) Recorded Texas Historic Landmark markers also require:]

[(i) letter-size floor plans delineating any alterations or additions, with relevant dates, to the structure under consideration for designation and relevant dates;]

[(ii) a letter-size site plan showing the building or structure under consideration, plus any outbuildings or other significant features, such as landscaping; and]

[(iii) the legal description of the property (lot and block numbers; metes and bounds).]

[(B) Historic Texas Cemetery markers also require proof of Historic Texas Cemetery designation.]

(b) Historic Texas Cemetery markers. A marker may be awarded to a cemetery only if the commission has designated the cemetery as a Historic Texas Cemetery. The marker must be located either at or immediately adjacent to the designated cemetery. [The Texas Historical Commission is the final arbiter on all matters related to marker eligibility, inscriptions, titles and placement.]

[(c) All materials submitted for an Official Texas Historical Marker become the property of the Texas Historical Commission and part of the permanent archival files of the agency, and are subject to the Texas Open Records Act.]

[(d) All Official Texas Historical Markers are the property of the State of Texas and may be recalled by the commission.]

§21.10. Ownership of Official Texas Historical Markers.

All Official Texas Historical Markers are the property of the State of Texas and may be recalled by the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604304
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 936-4323

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13 TAC §21.8

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Historical Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 442, which authorizes THC to adopt rules to carry out its programs.

The repeal implements the Government Code, §442.005 and §442.006.

§21.8. Criteria Considerations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 936-4323

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.3

The Texas Higher Education Coordinating Board proposes amendments to §4.3, concerning definitions for rules applying to all public institutions of higher education in Texas. Specifically, this amendment will include definitions for College-Readiness Standards and Statewide College-Readiness Vertical Teams necessary for implementation of §5.01 of House Bill 1, Third Called Session 2006, concerning the development of college-readiness standards and related activities for implementation of these standards statewide.

Lynette Heckmann, Acting Assistant Commissioner, Outreach and Success, has determined that for 2007 the cost will be $814,000, for 2008 the cost will be $684,000, and for 2009-2011 the cost will be $384,000, as a result of enforcing or administering the amended rule. There will not be any fiscal implications to local governments as a result of enforcing or administering the amended rule.

Ms. Heckmann has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended section will be a clearer understanding of the terms college-readiness standards and statewide college-readiness vertical teams. There is no effect on small businesses. There are no anticipated economic

costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lynette Heckmann, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or lynette.heckmann@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §28.008(c), which provides the Coordinating Board with the authority to adopt rules to establish the composition and duties of statewide college-readiness teams.

The amendment affects Texas Education Code, §28.008.

§4.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Active military service--Active service in the armed forces of the United States or in the National Guard or the Texas State Guard.

(2) [~~(1)~~] Associate of Science degree and the Associate of Arts degree--collegiate degrees consisting of lower-division courses designed to prepare students for transfer to a bachelor's degree program.

(3) [~~(2)~~] Associate of Applied Science degree and the Associate of Applied Arts degree--technical certificates issued to students who complete workforce education curricula of collegiate level.

(4) [~~(3)~~] Associate of Arts in Teaching degree--Board-approved collegiate degree programs consisting of lower-division courses intended for transfer to baccalaureate programs that lead to initial Texas teacher certification.

(5) [~~(4)~~] Bachelor of General Studies degree--a program designed principally for mature students who seek a flexible degree program and who do not desire or may not meet prerequisites of a highly structured traditional degree program, and to permit students to plan, with advisement, an individualized program with access to a wide range of academic disciplines and fields of professional study.

(6) [~~(5)~~] Bachelor of Applied Arts and Sciences degree--a program designed to provide a path to a bachelor's degree for students who have earned previous collegiate credit through workforce education curricula. The degree program combines general education requirements and a professional component designed to complement the student's technical or vocational competence.

(7) [~~(6)~~] Board--The Texas Higher Education Coordinating Board.

(8) College-Readiness Standards--The knowledge and skills expected of students to perform successfully in entry-level courses offered at institutions of higher education.

(9) [~~(7)~~] Commissioner--The Commissioner of Higher Education.

(10) [~~(8)~~] Common calendar--dates and information pertaining to the beginning and ending (and lengths) of academic semesters and sessions, applicable to all Texas public universities and community, technical and state colleges.

(11) [~~(9)~~] Consulting or testifying expert witness--any non-fact witness whose name must be disclosed during litigation as required by the Texas Rules of Civil Procedure.

(12) [~~(10)~~] Degree program--any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to a degree from an institution of higher education.

(13) [~~(11)~~] Faculty or professional staff of an institution of higher education--a non-classified, full-time employee who is a member of the faculty or staff and whose duties include teaching, research, administration or performing professional services, including professional library services.

(14) [~~(12)~~] Fiscal year--the State of Texas' fiscal year, September 1 through August 31.

(15) [~~(13)~~] Institution of higher education or institution--any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(16) [~~(14)~~] Interdisciplinary baccalaureate degrees--the Bachelor of General Studies degree (defined in paragraph (4) of this section) and such general degrees as liberal arts or humanities. These broad-based degrees vary in the amount of prescriptive structure but share the characteristics of flexibility for the student and interdisciplinary course selection.

(17) [~~(15)~~] Non-classified--an employee whose position is not controlled by the institution's classified personnel system or a person employed in a similar position if the institution does not have a classified personnel system.

(18) [~~(16)~~] Religious holy day--A holy day observed by a religion whose places of worship are exempt from property taxation under the Texas Tax Code, §11.20.

(19) Statewide Discipline-Based College-Readiness Vertical Teams--Teams composed of public school educators and higher education faculty whose duties are consistent with those provided under §28.008(b) of the Texas Education Code.

[~~(17) Active military service--Active service in the armed forces of the United States or in the National Guard or the Texas State Guard.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER H. P-16 COLLEGE-READINESS AND SUCCESS

19 TAC §§4.171 - 4.174

The Texas Higher Education Coordinating Board proposes new §§4.171 - 4.174, concerning P-16 college-readiness and success standards and statewide vertical teams which apply to all public institutions of higher education in Texas. Specifically, these new sections will establish the composition and duties of the statewide vertical teams required to develop and recommend college-readiness standards to the Texas Higher

Education Coordinating Board and the Commissioner of Education necessary for implementation of §5.01 of House Bill 1, Third Called Session 2006, concerning the development of college-readiness standards and related activities for implementation of these standards statewide.

Ms. Lynette Heckmann, Acting Assistant Commissioner, Outreach and Success, has determined that, for each year of the first five years the proposed new sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Heckmann has also determined that, for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of administering these sections will be the development and implementation of college-readiness standards that will assist parents, students, public school teachers, and higher education faculty understand what high school graduates will need to know and be able to do to be successful in entry-level college courses. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lynette Heckmann, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or lynette.heckmann@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §28.008, which provides the Coordinating Board with the authority to adopt rules to establish the composition and duties of statewide college-readiness teams.

The proposed sections affect Texas Education Code, §28.008.

§4.171. Purpose.

The purpose of this subchapter is to establish the composition and duties of the statewide discipline-based college-readiness vertical teams that have the responsibility to develop and recommend college-readiness standards to the commissioner and the commissioner of education.

§4.172. Authority.

Texas Education Code, §28.008 provides the commissioner with the authority to determine, in cooperation with the commissioner of education, the composition of statewide discipline-based college-readiness vertical teams.

§4.173. Composition and Duties of Statewide Discipline-Based College-Readiness Vertical Teams.

(a) There shall be a total of four statewide discipline-based college-readiness vertical teams: one each in English/Language Arts, Mathematics, Science, and Social Studies. All teams shall be composed of a minimum of 8 and a maximum of 20 members per subject area who represent the following:

(1) All levels of public school educators;

(2) Faculty from higher education;

(3) A balance between small and large districts;

(4) Various geographic regions of the state; and

(5) Overall demographics of the state.

(b) A maximum of 60 percent of the statewide discipline-based college-readiness vertical teams shall be composed of faculty from institutions of higher education.

(c) The statewide discipline-based college-readiness vertical teams shall develop college-readiness standards as defined in Texas Education Code, §28.008(b)(1). The teams may create an interdisciplinary vertical team composed of one public education member and one higher education member from each discipline-based college-readiness vertical team to review the standards and determine commonalities among the disciplines. The statewide discipline-based college-readiness vertical teams shall recommend the college-readiness standards to the commissioner of education and the commissioner.

(d) Upon completion of the development of college-readiness standards, the statewide discipline-based college-readiness vertical teams shall develop recommendations for curriculum alignment with college-readiness standards and other materials as defined in Texas Education Code, §28.008(b)(2) - (5). The teams shall be re-constituted at that time to ensure that a maximum of 60 percent of each of the re-constituted statewide discipline-based college-readiness vertical teams shall be composed of secondary public education teachers employed full-time in Texas public school districts.

§4.174. Appointment of Higher Education Faculty to the Statewide Discipline-Based College-Readiness Vertical Teams.

(a) The commissioner shall determine the criteria for selecting faculty from institutions of higher education for appointment to the four statewide discipline-based college-readiness vertical teams.

(b) The commissioner shall solicit recommendations for appointment from institutions of higher education and appropriate higher education organizations.

(c) Appointments by the commissioner to the statewide discipline-based college-readiness vertical teams outlined in §4.173(a) of this title (relating to Composition and Duties of Statewide Discipline-Based College-Readiness Vertical Teams) shall be made no later than December 29, 2006.

(d) Members representing institutions of higher education on the statewide discipline-based college-readiness vertical teams outlined in §4.173(a) of this title may be removed or replaced at the discretion of the commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2006
For further information, please call: (512) 427-6114

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §13.108

The Texas Higher Education Coordinating Board proposes amendments to §13.108 concerning Financial Planning. The proposed amendments relate to the exemption of some students

from higher tuition charges for repeated courses needed for graduation. Specifically, proposed changes to §13.108(d) clarify that the exemption from higher tuition applies only to students in the semester or term before graduation and is applicable to only one semester.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that, for each year of the first five years the section is in effect, public higher education institutions will lose limited amounts of tuition revenue that could have been charged students repeating courses. No other state or local governmental entities will be affected by this amendment.

Ms. Brown has also determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be lower tuition charges to students who need to repeat a course(s) to graduate in the semester or term in which the course(s) is taken. There is no effect on small businesses. There is no negative economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Janet Beinke, Director of Planning, P.O. Box 12788, Austin, Texas 78711; janet.beinke@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §54.0015.

The amendments affect Texas Education Code, §54.068.

§13.108. Tuition Rate for Students.

(a) - (c) (No change.)

(d) A student shall be exempted from payment of higher tuition for any course repeated in the final semester or term before graduation, if the course(s) is taken for the purpose of receiving a grade that will satisfy a degree requirement. This exemption applies for only one semester. The exemption does not affect an institution's ability to charge a higher tuition rate for courses that cannot be reported for funding for other reasons such as the excess credit hour limit, or an institution's ability to waive higher tuition rates for economic hardship. [~~if the student enrolls in repeated hours for a completed course for the purpose of receiving a grade that will satisfy a degree requirement.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 17. CAMPUS PLANNING
SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS

19 TAC §17.21, §17.22

The Texas Higher Education Coordinating Board proposes amendments to §17.21 and §17.22, concerning Campus Planning. Specifically, proposed §17.21 adds new language to include the Assistant/Associate Commissioner as part of the project application process. A new requirement is being proposed requiring that the Board of Regents Certification for a project application be dated no more than two years prior to the date the project application is submitted to the Coordinating Board for approval. A new provision for real property purchases has also been added allowing for a Board of Regents certification that is older than two years if an executive officer of the institution certifies that certification is still in effect. The proposed §17.22 reflects the definition of the criteria that allows a project to be considered for emergency approval.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Brown has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be to verify that the Board of Regents Certification is current. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lillian Wanjagi, Program Director, Office of Resource Planning, P.O. Box 12788, Austin, Texas 78711; lillian.wanjagi@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.027 and §61.0572.

The amendments affect the Texas Education Code, §61.0572.

§17.21. Application Procedures.

(a) (No change.)

(b) Institutions shall submit the following materials for the consideration of projects by the Assistant/Associate Commissioner, Commissioner, Committee on Strategic Planning, or Board:

(1) (No change.)

(2) a signed Board of Regents Certification form certifying that the institution's Board of Regents has approved the project dated no more than two years prior to the date the project application is submitted to the Coordinating Board for approval and that the project meets the criteria specified in §17.20 of this title (relating to Criteria for Approval of Projects);

(3) For real property purchases only, if the Board of Regents certification is dated more than two years prior to the date of the project application, the institution shall submit a certification from an appropriate executive officer that the Board of Regent's approval remains in effect.

(4) [~~(3)~~] a signed verification of compliance with applicable state and or federal requirements, and

(5) [~~(4)~~] any other documentation or information the institution believes will assist in the evaluation of the project.

(c) (No change.)

§17.22. Emergency Approval of Projects.

(a) An emergency project may be approved by the Commissioner or the Committee on Strategic Planning between regularly scheduled meetings of the Board. If necessary to address the emergency, the Commissioner may approve emergency projects between regularly scheduled meetings of the Board in consultation with the Chair of the Committee on Strategic Planning. A project would be eligible to submit a request for Emergency Approval if:

(1) delaying the project would result in an unacceptable cost to the state; or

(2) the project is necessary because of a natural disaster; or

(3) there is an unavoidable circumstance whereby the delay would critically impair the institution's function.

(b) (No change.)

(c) The application [~~Approval~~] of each emergency project shall be signed by the president of the institution. The president of the institution may not delegate this authority within the requesting institution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2006
For further information, please call: (512) 427-6114

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SUBCHAPTER F. RULES APPLYING TO REAL PROPERTY ACQUISITION PROJECTS

19 TAC §17.51, §17.52

The Texas Higher Education Coordinating Board proposes amendments to §17.51 and §17.52, concerning Campus Planning. Specifically, proposed §17.51 provides for a current appraisal dated two years or less for real property purchases with a cost greater than $300,000. The proposed rule also provides clarification of the rules regarding the credentials of an appraiser and adds the State of Texas appraiser licensing and certification as acceptable credentials for an appraiser. The proposed amendment includes additional requirements for the Texas State Technical College System regarding project application for the acquisition of real property. Specifically, proposed §17.52 makes a provision for eminent domain cases that are settled by the court at a cost higher than ten percent of the Board approved cost to allow notification to the Coordinating Board and not require reapproval of the project.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Brown has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be to ensure institutions are aware of the new guidelines and to provide clarification on the use of appraisals for real property acquisition. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lillian Wanjagi, Program Director, Office of Resource Planning, P.O. Box 12788, Austin, Texas 78711; lillian.wanjagi@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.027 and §61.0572.

The amendments affect the Texas Education Code, §61.0572.

§17.51. Additional Requirements.

(a) Appraisals.

(1) If the cost of the real property is $300,000 or more, an institution shall provide two current appraisal reports providing a current value of the property. The most recent appraisal of the local property tax appraisal district may be used for one of these reports.

(2) Appraisals shall be considered current if the appraisal was completed no more than two years prior to the date the project application is submitted to the Coordinating Board for approval.

(3) [~~(2)~~] If the cost of the real property is less than $300,000, an institution shall submit a brief description of the information that it has relied upon to determine the current market value or provide an appraisal report estimating the current market value of the property.

(b) Appraiser Credentials. Any appraisal report provided to the Board under this section shall certify that the appraiser(s) meets one of the following requirements:

(1) Is designated an Accredited Senior Appraiser by the American Society of Appraisers (A.S.A.) with the professional designation in real estate; [~~a senior member of the Appraisal Institute (M.A.I., S.R.P.A. and S.R.A);~~]

(2) Is a [~~senior~~] member of the Appraisal Institute designated M.A.I. by the Appraisal Institute and is experienced in the valuation and evaluation of commercial, industrial, residential, and other types of properties, and who advise clients on real estate investment decisions [~~American Society of Appraisers with the professional designation in real estate or~~];

(3) Is a member of the Appraisal Institute designated S.R.P.A. and is experienced in the valuation of commercial, industrial, residential, and other types of property;

(4) Is a member of the Appraisal Institute designated S.R.A. and is a real estate solutions provider who is experienced in the analysis and valuation of residential real property;

(5) [~~(3)~~] Is a senior member [~~or appraiser-counselor~~] of the National Association of Independent Fee Appraisers designated IFAS; [~~(designated I.F.A.S. or I.F.A.C.).~~]

(6) Is an appraiser-counselor member of the National Association of Independent Fee Appraisers designated IFAC; or

(7) Is a licensed member of the Texas Appraiser Licensing and Certification Board in good standing and certified at the appropriate level for the project and must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser must also state that they have the knowledge and experience to complete the assignment competently.

(c) The requirement for appraisals in no way obligates the institution to release the figures to property owners during the acquisition process, nor does the requirement of appraisals deny the institution the right to settle a purchase at a price below the appraisals.

(1) (No change.)

(2) The Board shall refer any public request for an appraisal that is marked "Confidential" or related project application materials to the Office of the Attorney General and provide notice to the institution that a request for the appraisal has been made under the Public Information Act found in Texas Government Code, Chapter 552.

(d) Special requirements for the Texas State Technical College System. Proposed real property acquisitions by the Texas State Technical College System in Cameron, Potter, Harrison, and Nolan Counties must be approved by the Office of the Governor after Board approval and prior to acquisition in compliance with Texas Education Code §135.02(c). The Board shall provide the Office of the Governor a copy of the approval letter and analysis. The System shall provide any additional documentation to the Office of the Governor. The System shall provide a copy of the Governor's approval to the Board for inclusion in the project application file within 30 days of the approval.

§17.52. Eminent Domain.

(a) - (b) (No change.)

(c) Upon resolution, the institution shall promptly report to the Board the costs associated with the eminent domain proceedings. If the court establishes a purchase price 10 percent higher than that approved by the Board, the institution shall notify the Board and submit a copy of the court judgment indicating the final court-established value. [~~Re-approval of the project by the Board shall not be necessary unless the court establishes a purchase price 10 percent higher than that approved by the Board.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §21.126

The Texas Higher Education Coordinating Board proposes an amendment to §21.126, concerning the Texas B-On-Time Loan Program. Specifically, §21.126 states that the amount of the B-On-Time loan may not exceed the difference between the cost of attendance and other forms of student assistance for which the student is eligible, with the exception of Federal PLUS loans. The proposed amendment would clarify that this requirement applies only to loans funded by tax-exempt bonds. Loans funded by tuition set aside or general revenue funds are not subject to this requirement.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering these changes in the rule.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the amended section will be to encourage greater participation in the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

The amendment affects Texas Education Code, §§56.451 - 56.465.

§21.126. Disbursement to Students.

(a) In the case of loans made from the proceeds of tax-exempt bonds, no [~~No~~] disbursement shall be made to any student until:

(1) - (5) (No change.)

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER CC. EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM

19 TAC §21.954

The Texas Higher Education Coordinating Board proposes amendments to §21.954, concerning the Early High School Graduation Scholarship Program. Specifically, the amendments to §21.954(f) would encourage institutions to use the Coordinating Board web site to confirm student eligibility. The Board sends eligibility letters to the institutions and to the students when student eligibility is confirmed, but the letters do not always get to the right people at the institutions and/or the students lose their letters. The Board has an Eligibility Verification web site that institutions can use to confirm student awards. The Board will continue to send the letters, but the process of sending duplicate letters is wasting staff time and causing undue delays in the delivery of the awards to the students. Use of the web site should expedite the process. The addition of

§21.954(i) would eliminate conflicts regarding funds available in a given term. A student's award is for a fixed amount that ranges from $500 to $3000. When the student's application is processed, a notice of eligibility is sent to the institution named on the application with an indication of the value of the student's total award. If the student changes his or her mind and notifies the Board, the Board issues a second letter of eligibility to the new school named by the student, again indicating the value of the student's award. All of these actions are taken prior to the start of the semester in order to make it easier for the student to enroll. After the student is enrolled and the school's drop/add period has ended, the institution sends the Board a Request for Reimbursement for the student's actual tuition and fee charges. The Board processes the Request and issues the amount requested, up to the student's award maximum. If the student enrolls in two different institutions for the same term, the institutions are competing for the same award. They know the total value of the student's award but do not know how much of the award might be obligated to the other institution. As a result, although the student will be exempted at the beginning of the term from tuition and fees at both institutions, he or she might be billed for unpaid balances at one or both schools later in the term if the EHS award cannot cover the total charges exempted at both institutions. Students have six years to receive the full value of their awards. Therefore, the limit to using the award at only one institution in a given term should not keep the students from receiving the full benefit.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect there are no fiscal implications for state or local governments.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit would be that schools would be able to confirm student eligibility more quickly than in the past and students will not be forced to reimburse institutions for excess exemptions made through the confusion of concurrent enrollment. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.209, which states that the Coordinating Board is authorized to adopt rules to administer Texas Education Code, Chapter 56, Subchapter K, relating to the Early High School Graduation Scholarship Program.

The amendments affect the Texas Education Code, §§56.201 - 56.210.

§21.954. The Application and Awarding Process.

(a) - (e) (No change.)

(f) As soon as possible after processing applications, the Board will notify the relevant institutions, students and school districts of the students' eligibility for awards. The Board will issue an award letter to the institution named in the student's application. Only one copy of the letter will be sent to the institution. If the letter is lost or if verification is needed prior to the receipt of the letter, the institution can document the student's eligibility by printing a copy of the relevant student's entry from the Board's verification web site.

(g) - (h) (No change.)

(i) No student may receive awards for the same term through more than one institution. Students who are concurrently enrolled will need to select the college through which they wish to receive awards. If a student's selection is not the school originally scheduled for an award, it is the student's responsibility to notify the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1083, 21.1084, 21.1086, 21.1088

The Texas Higher Education Coordinating Board proposes amendments to §§21.1083, 21.1084, 21.1086, and 21.1088, concerning the Educational Aide Exemption Program. Specifically, the amendment to §21.1083(2) reflects the need for eligible students to have been employed as educational aides on a full-time basis for at least a year, and amendments to §21.1083(3) clarify that current employment while receiving an award must be for the full term for which an award is made unless the student is granted a hardship waiver of this requirement. The amendments to §21.1084 indicate the Coordinating Board will use its web site as an auxiliary source of information for institutions to use in verifying student awards. This should speed up the delivery of the awards by decreasing the demand for paper copies of award letters. The amendment to §21.1086 indicates the program will provide funding to cover resident tuition, not non-resident tuition. Although the program is limited to residents of Texas, Texas Education Code §61.0595 and §54.068 authorize institutions to charge students a tuition rate up to the nonresident rate for courses they take in excess of 30 hours beyond the requirements of their degrees or for courses they take for the third time. The amendment to §21.1086 would allow the program to make such students an award up to the resident tuition rate, but would leave the additional tuition charges as the students' responsibility. The amendments to §21.1088(b) do not add new information but clarify the information given in §21.1088(a), that in order to be exempt from student teaching the student must have been in the Educational Aides Exemption Program prior to the receipt of his/her bachelor's degree. This is in keeping with program statutes (TEC §21.050(c)).

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering these changes in the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit would be that students would understand more easily the program's em-

ployment requirements; hardship provisions would be provided for students unable to meet the current employment requirement for reasons beyond their control; and, by limiting awards to resident tuition and relevant fees, program funds would assist more students. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §54.214, which states that the Coordinating Board is authorized to adopt rules to implement this section.

The amendments affect the Texas Education Code, §54.214.

§21.1083. Eligible Students.

To receive an award through the Educational Aide Exemption Program, a student must:

(1) (No change.)

(2) have at least one school year of full-time experience as an educational aide during the five years preceding the term or semester for which the student is awarded his or her initial exemption;

(3) be employed in some capacity by a school district in Texas during the full term [~~school year~~] for which the student receives the award unless granted a hardship waiver as described in §21.1089 of this title (relating to Hardship Provisions);

(4) - (7) (No change.)

§21.1084. The Application and Awarding Process.

(a) - (c) (No change.)

(d) As soon as possible after processing applications, the Board will notify the relevant institutions, students and school districts of their awards. Institutions will be able to verify approval or a student's award through the Board's web site.

§21.1086. Award Amounts and Processing Cycle.

(a) Amounts. Students receiving awards through the Educational Aide Exemption Program shall be exempted from the payment of (or reimbursed for) resident tuition and required fees, other than laboratory and class fees, for courses taken during the relevant term.

(b) - (c) (No change.)

§21.1088. Exemption from Student Teaching.

(a) An individual who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an award through this subchapter shall not be required by his or her institution to participate in any field experience or internship consisting of student teaching as a requirement to receive a teaching certificate.

(b) An individual who receives a bachelor's degree prior to receiving his or her first award under this subchapter is not eligible for a student teaching exemption under subsection (a) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

TRD-200604402
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2006
For further information, please call: (512) 427-6114

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19 TAC §21.1089

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §21.1089 concerning the Educational Aide Exemption Program. Specifically, §21.1089 is repealed and new §21.1089 is proposed as Hardship Provisions.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that there are no fiscal implications to the state or to units of local governments for each year of the first five-year period the repeal is in effect.

Ms. Hollis has also determined that, for each year of the first five years the proposed repeal is in effect, the public benefit would be that the public would be kept informed about the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal of the section is proposed under the Texas Education Code, §56.214, which states that the Coordinating Board is authorized to adopt rules to implement this proposal.

The repeal of §21.1089 affects the Texas Education Code, §54.214.

§21.1089. Dissemination of Information and Rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2006
For further information, please call: (512) 427-6114

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19 TAC §21.1089, §21.1090

The Texas Higher Education Coordinating Board proposes new §21.1089 and §21.1090 concerning the Educational Aide Exemption Program. Specifically, new §21.1089 would dedicate this section to the subject of Hardship Provisions, under which an otherwise eligible student may receive an exemption if his or her employment by a school district is terminated prior to the end

of the term for which the exemption is awarded. New §21.1090 is added due to the addition of §21.1089 regarding Hardship Provisions. The section regarding Dissemination of Information and Rules is renumbered as §21.1090.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that there are no fiscal implications for state and local government for each year of the first five-year period the new sections are in effect.

Ms. Hollis has also determined that, for each year of the first five years the proposed new sections are in effect, the public benefit would be that the public would be kept informed about the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §54.214, which states that the Coordinating Board is authorized to adopt rules to implement these sections.

The proposed new sections affect the Texas Education Code, §54.214.

§21.1089. Hardship Provisions.

An individual is considered to meet the employment requirements listed in §21.1083(3) of this title (relating to Eligible Students) if he or she was employed at the beginning of the relevant term but was unable to remain employed throughout the term for reasons beyond his or her control. Such situations include, but are not limited to, the following:

(1) a severe illness or other debilitating condition that may affect the individual's ability to continue employment,

(2) responsibility for the care of a temporarily disabled dependent that may affect the recipient's ability to continue employment, or

(3) performance of active duty military service.

§21.1090. Dissemination of Information and Rules.

The Board is responsible for publishing and disseminating general information and program rules for the program described in this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

TRD-200604401
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2006
For further information, please call: (512) 427-6114

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SUBCHAPTER MM. DOCTORAL INCENTIVE LOAN REPAYMENT PROGRAM

19 TAC §21.2084

The Texas Higher Education Coordinating Board proposes amendments to §21.2084, concerning the Doctoral Incentive Loan Repayment Program. Specifically, the amendments to §21.2084 would allow applicants to be considered eligible for participation if, in addition to meeting all other program requirements, they attended (or resided in an area near) a high school from which only 50 percent or less of the graduating class enrolled in an institution of higher education following graduation. The amendments to §21.2084 would also extend program eligibility to individuals who began employment as a faculty member or administrator in an eligible institution no earlier than 12 months prior to the service period for which application for loan repayment has been made.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering these changes in the rule.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended section will be to encourage greater participation in the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.091, which authorizes the Coordinating Board to establish and administer the Doctoral Incentive Loan Repayment Program and adopt rules as necessary.

The amendments affect the Texas Education Code, §§56.091 - 56.096.

§21.2084. Eligibility for Encumbered Funds.

(a) To become initially eligible to participate in this program, so that the Board encumbers available funds for the applicant, pending completion of his or her service requirements, an applicant:

(1) (No change.)

(2) must demonstrate:

(A) that he or she graduated from a Texas high school that at the time of his or her graduation was:

(i) one from which only 50 percent or less of the graduating class enrolled in an institution of higher education following graduation; or

~~*[(i)* among the lowest 50 percent among high schools, with regard to sending students to public institution of higher education; or]~~

(ii) (No change.)

(B) that at the time of graduation from high school, he or she resided in an area of Texas where the high school closest to his or her residence was:

(i) one from which only 50 percent or less of the graduating class enrolled in an institution of higher education following graduation; or

[(i) ~~among the lowest 50 percent among Texas high schools, with regard to sending students to public institution of higher education; or~~]

(ii) (No change.)

(3) (No change.)

(4) for applicants to the program for the 2005 state fiscal year, shall not be currently employed full-time as a faculty member or administrator in an eligible institution; and for subsequent program years, must not have been employed in an eligible institution for more than twelve months [~~one semester~~]; and

(5) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2006
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 599. TREATMENT STANDARDS

22 TAC §599.3

The Texas Structural Pest Control Board proposes an amendment to 22 TAC §599.3, concerning Subterranean Termite Pre-Construction Treatments. The proposal will allow the use and disclosure of wood framing preconstruction treatments.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the amended rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the amendment will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the amendment will be in effect.

Mr. Walton has also determined that for each year of the first five years the amendment as proposed is in effect, the public benefits anticipated as a result of enforcing the amendments as proposed will be that builders and consumers will know what type of treatment was provided during construction.

There will be no cost of compliance for small businesses since the proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the proposal.

There is no anticipated economic cost to individuals who are required to comply with the proposal.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, Texas 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§599.3. Subterranean Termite Pre-Construction Treatments.

(a) Subsections [~~Sections~~] (b) - (f) does not apply to baits or baiting systems and subsections (c) - (d) do not apply to wood applied termiticide products.

(b) - (d) (No change.)

(e) A primary treatment of the wood framing following full label application instructions for barrier treatment protection must be performed with a U.S. Environmental Protection Agency registered wood treatment termiticide that has specific label instructions to be used as a primary treatment to offer protection for prevention of subterranean termites in new construction. This treatment may be used in lieu of a full, partial, or bait treatment and must include providing a barrier application to exposed surfaces of wood framing with exterior sheathing in place but before any walls are enclosed to a height of not less than two (2) feet above a contact with a slab foundation or a (2) foot horizontal and vertical treatment of wood above contact with a concrete crawlspace or basement foundation. Label instructions must provide a barrier application for the prevention of subterranean termite intrusion and tubing onto non-cellulose areas around bath-traps, plumbing penetrations and concrete foundation areas. The registered wood treatment termiticide must be supported by a minimum of five years of product specific research for the prevention of subterranean termites that has been conducted by the USDA Forest Service or an accredited university study. U.S. Environmental Protection Agency registered wood treatment termiticide products that do not meet these requirements may only be used in conjunction with a full, partial, or bait treatment if allowed by the product label. [~~Treatment of the wood framing must be disclosed as a partial treatment.~~]

(f) - (g) (No change.)

(h) Any violation of this section may result in an administrative penalty of up to [~~not less than~~] $3000 per violation and is considered a base penalty 3.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2006.

TRD-200604364
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 305-8270

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22 TAC §599.4

The Texas Structural Pest Control Board proposes an amendment to 22 TAC §599.4, concerning Termite Treatment Disclosure Documents. The proposal will allow the pre-construction treatment standards on wood framing on the Board's Proper Pre-Construction Subterranean Termite Treatments form.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the amended rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the amendment will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the amendment will be in effect.

Mr. Walton has also determined that for each year of the first five years the amendment as proposed is in effect, the public benefits anticipated as a result of enforcing the amendment as proposed will be that builders and consumers will know what type of treatment was provided during construction.

There will be no cost of compliance for small businesses since the proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the proposal.

There is no anticipated economic cost to individuals who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, Texas 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§599.4. Termite Treatment Disclosure Documents.

(a) (No change.)

(b) Each termite treatment disclosure document must include, but is not limited to:

(1) - (7) (No change.)

(8) For pre-construction treatments, the Board-approved Termite Pretreatment Disclosure Document (SPCB/D-4) [~~(SPCB/D-3)~~] must be provided to, and signed by, the contractor or purchaser of the pretreatment service prior to the beginning of the treatment. A signed copy must be kept in the pest control use records of the licensee. Failure to provide this document prior to treatment will result in an administrative penalty of up to $3000 per violation. The text and format of the termite pre-treatment disclosure document shall be as follows:
Figure: 22 TAC §599.4(b)(8)

(9) - (10) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2006.

TRD-200604365
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 305-8270

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 137. DISABILITY MANAGEMENT

The Texas Department of Insurance, Division of Workers' Compensation proposes new §§137.1, 137.10, 137.100 and 137.300, concerning disability management, including return to work and treatment guidelines and treatment planning. These new sections, as well as chapter and subchapter title changes, are necessary to implement portions of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005. The proposed rules will facilitate compliance with statutory changes to Labor Code §413.011 and §413.018, which set forth requirements for the adoption of treatment and return to work guidelines and other rules relating to disability management, as well as the evaluation of expected or average return to work timeframes. While treatment guidelines adopted by the Division are not required to be used by workers' compensation health care networks, return to work direction is given for participants providing services to all injured employees including those subject to workers' compensation health care networks established under Insurance Code Chapter 1305.

Prior to proposal, the Division considered the merits of various published return to work guidelines and treatment guidelines. Several stakeholder and work group meetings were held to discuss the disability management concept and rules related to guidelines. Meetings were also held with nationally recognized guideline publishers. During a March 23, 2006 meeting, representatives of the various guidelines made presentations to Division staff and workers' compensation system stakeholders regarding the development and use of their individual guidelines. After reviewing and evaluating these guidelines and stakeholder input, as well as considering the recommendations of the Division's Medical Advisor and the former Texas Workers' Compensation Commission Medical Advisory Committee workgroup, the Division made the selection of guidelines identified in this chapter.

The title of Chapter 137 is proposed to be changed to "Disability Management" to better encompass all of the proposed subchapters and rules, in addition to future rulemaking initiatives under the umbrella of the disability management philosophy. Additionally, the title of Subchapter B is proposed to be changed to "Return to Work" to broaden the scope of the rules contained in this subchapter. Chapter 137 is proposed to be divided into four subchapters: General Provisions; Return to Work; Treatment Guidelines; and Treatment Planning.

Proposed §137.1 describes disability management as a process designed to optimize health care and return to work outcomes for those injured employees at risk for delayed recovery in the Texas workers' compensation system. This section explains how disability management tools will be used in the workers' compensation system. This section also addresses the relationship between these tools and other utilization review or adjudication processes.

Proposed §137.10 identifies the most current edition of *The Medical Disability Advisor, Workplace Guidelines for Disability*

Duration (MDA), as the Division return to work guidelines. The MDA is evidence-based, scientifically valid, and outcome-focused; and, designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care as required by Labor Code §413.011(e).

The MDA provides a basis for health care providers, insurance carriers, injured employees, employers, and the Division to objectively establish or develop return to work goals or a return to work plan, based on guideline established expectancies for disability duration, that include expected return to work timeframes for the timely, safe and medically appropriate return of injured employees to productive work. Return to work guidelines establish a framework to foster, facilitate and improve communications among injured employees, health care providers, employers, insurance carriers and the Division regarding return to work goals, expected return to work timeframes and proposed job duty and activity modifications. Such communication is essential in returning injured employees to safe, medically appropriate and productive work.

The MDA provides reviewed and updated content. This publication provides disability duration estimates for normal recovery periods, rehabilitation guidelines with frequency tables for uncomplicated cases, and natural language descriptions of the most common illnesses and injuries of working people. In addition, MDA includes detail on co-morbidities to modify normal recovery periods. Features include: alphabetical listings of diagnoses and procedures; an alphabetical index; a medical code index; a glossary of terms; a section regarding management of medical absences; and diagnosis and procedure topics.

During the time between publication of editions, Reed Group, the publisher, collects information from the users of the MDA to improve and refine the guidelines. This development process includes data collection, topic identification, research and analysis of duration data and development of draft duration tables and manuscripts. The Reed Group's Medical Advisory Board review and input regarding draft manuscripts is consolidated for publication of the final manuscript.

In evaluating the evidence-based criteria, the Division considered that the disability duration guidelines published by Reed Group are based on statistical analyses of actual outcome data. The MDA guidelines also integrate clinical judgment and experience, and clinical assessment of the minimum, optimum, and maximum expectancies of a disability duration as the most constant variable in predicting a length of disability. In developing the new edition of the MDA, the statistical data used was derived from an additional 1.65 million new disability cases between the years 2001 and 2003.

Proposed §137.100 identifies the most current edition of the *Official Disability Guidelines- Treatment in Workers' Comp* (ODG), published by Work Loss Data Institute, as Division treatment guidelines. The Division treatment guidelines outline the frequency and extent of services presumed to be medically necessary and appropriate for a compensable injury. The ODG meets the provisions outlined in Labor Code §413.011(e) that require Division treatment guidelines to be evidence-based, scientifically valid and outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care.

The ODG evidence-based guidelines are linked directly to the evidence in the studies and references relevant to the specific treatment conclusion. The publication incorporates abstracts of studies with appropriate references and citations to the complete original research. This evidence is continuously updated by integrating the findings of new studies as they are conducted and released. The ODG treatment guidelines are well known throughout the health care and insurance industries and meet the criteria for recognition by the Federal Agency for Healthcare Research and Quality (AHRQ).

The ODG is comprehensive. Based on representations by Work Loss Data Institute, ODG covers conditions that represent over 99% of workers' compensation costs. The ODG allows providers and carriers access to treatment information in one comprehensive and consistently organized source. This comprehensive approach enhances the usability of the guidelines and facilitates a consistent application of the guidelines in claims management systems and utilization review processes.

ODG contains prescreened links on their website to treatment resources concerning many workers' compensation conditions. The links are followed by a short description or excerpt from each of the website's contents, which will allow health care providers to quickly provide injured employees with personalized, patient-friendly information pertaining to recovery by printing the most relevant pages. This offers the patient information describing the injury, self-help methods for speeding recovery and suggested therapies for regaining functionality and productivity.

Proposed §137.300 promotes appropriate management of work-related injuries or conditions. This section outlines the circumstances that allow or require treatment plans to be submitted by the treating doctor and approved by the insurance carrier before health care is provided to the injured employee. This provision facilitates the treating doctor's ability to fulfill his or her responsibility to effectively manage and maintain efficient utilization of health care as indicated in Labor Code §408.023 and §408.025.

Allen McDonald, Deputy Commissioner, Workplace and Medical Services, has determined that for each year of the first five years the proposed sections will be in effect, there may be a minimal fiscal impact to state and local governments if they need to purchase the guidelines to enforce or administer the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. McDonald has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be disability management rules that provide a framework to optimize health care and return to work outcomes. Adopting these sections provides tools that benefit system participants in a variety of ways.

All system participants benefit from the proposed disability management rules because this chapter establishes a framework to foster, facilitate and improve communications among injured employees, health care providers, employers, insurance carriers, and the Division by establishing treatment guideline and planning benchmarks and return to work goals and timeframes. Application of disability management tools should result in improved return to work outcomes. Disability management concepts have also resulted in reduced system cost when implemented in other settings, such as group health and other states' workers' compensation systems. Reduced system costs are also anticipated when implemented in the Texas workers' compensation system. Reduced costs benefit all system participants through the potential for reduced premiums and an option for reallocation of savings to other system needs.

By establishing the guidelines as benchmarks, system participants receive clear direction regarding overall system expectations. This direction enhances meaningful analysis of system participants' activities, and helps identify suggestions for timely system improvements.

Injured employees benefit from the provision of health care focused on the evidence-based medicine concepts of the adopted treatment guidelines. Additionally, those evidence-based medicine concepts are systematically applied to care outside the guidelines through the treatment planning processes. The application of these concepts insulate the injured employee from unnecessary or inappropriate treatment and services. Appropriate treatment and services promote return to work. Additionally, the return to work guidelines establish expected return to work timeframes and proposed job duty/activity modifications to return injured employees to safe, medically appropriate productive work. Optimal results for individual injured employees will be returning to pre-injury jobs and wages.

Because return to work guidelines establish expected return to work timeframes and proposed job duty/activity modifications, employers should experience better return to work outcomes. With an increased return to work focus, injured employees' disability durations should be decreased. Employers will benefit from injured employees' timely return to work in either full or limited (modified/alternate) duty capacity. Pre-injury employers will be positively impacted by the improved return to work outcomes of trained, experienced employees. This is because returning an injured employee to work should directly decrease employers' hiring and training costs, as well as costs related to an employee's absence. There may be additional indirect benefits to the employer through decreased premiums as a result of decreased medical benefit and indemnity costs through improved delivery of health care and improved return to work outcomes.

Health care providers benefit from the use of consistent, standardized benchmarks for the provision of health care in the non-network system. Further, the disability management tools provide a reference to appropriate evidence-based health care and return to work goals. Those evidence-based medicine concepts are also systematically applied to care outside the guidelines through the treatment planning processes. The treatment planning process leads to consensus between the health care provider and carrier regarding health care to be provided. This agreement reduces the overall administrative burdens of the system by eliminating the need for retrospective medical necessity disputes, increasing surety of payment, and minimizing fee disputes.

Insurance carriers benefit from the use of consistent, standardized benchmarks for the provision of health care in the non-network system. Disability management tools provide a reference for appropriate evidence-based health care and return to work goals. Evidence-based medicine concepts are systematically applied to care outside the guidelines through the treatment planning processes. These proposed rules provide carriers with guidance to manage claims through the use of consistent benchmarks established by the guidelines and through the treatment planning process when treatments and services or diagnoses are not addressed in the guidelines. Application of disability management tools should reduce indemnity benefit costs through the efficient utilization of medical services with resulting reduction in medical costs, and improved return to work outcomes.

The adoption of the disability management tools establish defined expectations for system participants. Clarity for system participants should result in fewer disputes and thus requires less intervention by the Division. Adoption of guidelines also provides a framework for the Division to use in establishing criteria related to performance based tiers and medical quality reviews.

Mr. McDonald has determined that for each year of the first five years the proposed sections will be in effect, there will be an increase in cost to stakeholders due to the acquisition and maintenance of the adopted guidelines. While many stakeholders currently hold licenses to the adopted products, other stakeholders will need to secure a license to use these products. Based on market penetration information derived from discussions with the vendors, it is anticipated that an additional 3,000 to 6,000 individual or group licenses for these products will be required for implementation. For MDA, a single user unit cost is $347.50 for the book version; $347.50 for the CD ROM version; and $197.50 for the Internet online version. For ODG, a single user unit cost is $243.75 for the book version; and $162.50 for the Internet online version. The combined estimated single user cost for the Internet online versions of both proposed products is $360.00. The Internet online versions are anticipated to be more frequently purchased than are book or CD ROM versions. In the event that clinics or insurance groups purchase multiple licenses or implement server-based solutions, as opposed to single user licenses, the costs would be reduced on a per individual user basis. For all Texas state agencies and Texas academic institutions, the overall single user cost for the Internet online version is estimated at $162.50.

While there are expected to be reductions in the overall medical and indemnity claim costs related to the implementation of the disability management concept, which would more than offset any additional expenses, it is not possible to forecast a direct amount that could be realized due to the complexities of the variables associated with the Workers' Compensation System. A broad general estimate, however, may be made based on previous Workers' Compensation Research Institute (WCRI) reports that include medical cost information relative to twelve states, including Texas. Information included in *The Anatomy of Workers' Compensation Medical Costs and Utilization in Texas, 5th Edition* (WCRI © 2005) indicates that utilization in Texas is approximately 80% higher than in the median state. California, the next high utilization state was approximately 50% higher than the median state. This indicates a significant opportunity in Texas to impact utilization through the use of the disability management tool set. A very conservative reduction in utilization of 10% would still leave Texas as the high utilizer state compared to the other states in the report. Reduction of medical payments by 10%, through efficient identification of necessary medical treatments and services, would have a significant impact on the estimated annual $1.3 - $1.5 billion in medical costs in the Texas workers' compensation system. Although there are many variables, such as network penetration, that determine the actual impact, it is logical to assume that a more significant reduction in utilization leads to additional savings.

Other than costs previously identified, any additional economic costs for system participants exist under current rules or result from the enactment of HB 7, and are not a result of the adoption, enforcement, or administration of the proposed sections.

There will be no difference in the cost of compliance between a large and small business as a result of the proposed sections. Based upon the cost of labor per hour, there is no dispropor-

tionate economic impact on small or micro-businesses. Even if the proposed sections would have an adverse effect on small or micro-businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro-businesses because the Labor Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on October 2, 2006. Comments may be submitted via the Internet through the Department's Internet website at *http://www.tdi.state.tx.us/wc/proposedrules/toc.html* or by mailing or delivering your comments to Kristi Dowding, Legal Services, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

The Division will consider the adoption of the proposal in a public hearing scheduled for October 2, 2006 in the Tippy Foster Room, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas.

Copies of a two-volume reference text of *The Medical Disability Advisor, Workplace Guidelines for Disability Duration* and the *Official Disability Guidelines - Treatment in Workers' Comp* will be available for inspection at the Texas Department of Insurance, Public Information Office, 333 Guadalupe Street, Austin, Texas and at the Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas 78744. In addition, during the comment period, a free, 30-day Internet trial of *The Medical Disability Advisor, Workplace Guidelines for Disability Duration* is available at *www.mdainternet.com* (user name: texas@mdainternet.com and password: Texas) and the *Official Disability Guidelines - Treatment in Workers' Comp* is available at: *http://www.disabilitydurations.com/ODG%20Treatment%20in%20Workers.htm#ProcedureSummary*.

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §137.1

The section is proposed under Labor Code §§413.011, 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021, 402.00111, and 402.061. Labor Code §413.011 provides that the commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and sets out criteria for such adoption. In addition, this section provides that the commissioner may adopt individual treatment protocols and rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. Section 401.011 contains definitions used in the Texas workers' compensation system (in particular, §401.011(18-a), the definition of "evidence-based medicine," §401.011(22-a), the definition of "health care reasonably required" and §401.011(42), the definition of "treating doctor"). Section 413.021 requires an insurance carrier to provide the employer with return-to-work coordination services as necessary to facilitate an employee's return to employment. Section 409.005 provides the procedure for filing a report of injury, the format to be used, authorizes the adoption of rules regarding the information that must be included in the report, and requires the employer to notify the employee, the treating doctor, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. Section 408.023 requires the division to develop a list of doctors licensed in Texas who are approved to provide health care services under the Workers' Compensation Act and authorizes the commissioner to adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor. Section 408.025 authorizes the commissioner by rule to adopt requirements for reports and records, and provides that the treating doctor is responsible for maintaining efficient utilization of health care. Section 413.017 provides that certain medical services are presumed reasonable. Section 413.018 provides that the commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded and the division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided.

Section 413.013 authorizes the commissioner by rule to establish programs for prospective, concurrent, and retrospective review and resolution of disputes regarding health care treatments and services, for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments to ensure that the medical policies or guidelines are not exceeded, to detect practices and patterns by insurance carriers, and to increase the intensity of review for compliance with the medical policies or fee guidelines. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed (specifically health care that enhances the ability of the employee to return to or retain employment) and provides that, except in an emergency, all health care must be approved or recommended by the employee's treating doctor. Section 402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §§413.011, 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021.

§137.1. Disability Management Concept.

(a) Disability management is a process designed to optimize health care and return to work outcomes for those injured employees at risk for delayed recovery in the Texas Workers' Compensation System.

(b) This chapter is designed to provide disability management tools, such as treatment and return to work guidelines, treatment protocols, treatment planning, and case management to benchmark, manage, and achieve improved outcomes. The Division may use these tools for the following purposes including, but not limited to:

(1) resolving income benefit disputes;

(2) resolving medical benefit disputes;

(3) establishing performance-based tiers;

(4) defining performance-based incentives;

(5) determining sanctions or penalties;

(6) performing medical quality reviews; or

(7) assessing other matters deemed appropriate by the Commissioner of Workers' Compensation.

(c) The Division will utilize this chapter to implement and interpret specific provisions contained in Labor Code §413.011(a) and (e), and this chapter takes precedence over any conflicting payment policy provisions adopted or utilized by the Centers for Medicare and Medicaid Services (CMS) in administering the Medicare program.

(d) Independent Review Organization (IRO) decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to Medical Dispute Resolution by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over adopted treatment guidelines, treatment protocols, treatment planning and Medicare payment policies. In a medical necessity dispute, insurance carriers, health care providers and injured employees should submit scientific medical evidence that establishes that a variance from the adopted treatment guidelines or treatment protocols is reasonably required to cure and/or relieve the injured employee from the effects of the compensable injury.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

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Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4288

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SUBCHAPTER B. RETURN TO WORK

28 TAC §137.10

The section is proposed under Labor Code §§413.011, 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021, 402.00111, and 402.061. Labor Code §413.011 provides that the commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and sets out criteria for such adoption. In addition, this section provides that the commissioner may adopt individual treatment protocols and rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. Section 401.011 contains definitions used in the Texas workers' compensation system (in particular, §401.011(18-a), the definition of "evidence-based medicine," §401.011(22-a), the definition of "health care reasonably required" and §401.011(42), the definition of "treating doctor"). Section 413.021 requires an insurance carrier to provide the employer with return-to-work coordination services as necessary to facilitate an employee's return to employment. Section 409.005 provides the procedure for filing a report of injury, the format to be used, authorizes the adoption of rules regarding the information that must be included in the report, and requires the employer to notify the employee, the treating doctor, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. Section 408.023 requires the division to develop a list of doctors licensed in Texas who are approved to provide health care services under the Workers' Compensation Act and authorizes the commissioner to adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor. Section 408.025 authorizes the commissioner by rule to adopt requirements for reports and records, and provides that the treating doctor is responsible for maintaining efficient utilization of health care. Section 413.017 provides that certain medical services are presumed reasonable. Section 413.018 provides that the commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded and the division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided.

Section 413.013 authorizes the commissioner by rule to establish programs for prospective, concurrent, and retrospective review and resolution of disputes regarding health care treatments and services, for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments to ensure that the medical policies or guidelines are not exceeded, to detect practices and patterns by insurance carriers, and to increase the intensity of review for compliance with the medical policies or fee guidelines. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed (specifically health care that enhances the ability of the employee to return to or retain employment) and provides that, except in an emergency, all health care must be approved or recommended by the employee's treating doctor. Section 402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §§413.011, 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021.

§137.10. Return to Work Guidelines.

(a) Insurance carriers, health care providers, and employers shall use the disability duration values in the current edition of *The Medical Disability Advisor, Workplace Guidelines for Disability Duration* (Division return to work guidelines) as guidelines for the evaluation of expected or average return to work time frames.

(b) Information on how to obtain or inspect copies of the Division return to work guidelines may be found on the Division's website: *www.tdi.state.tx.us*.

(c) The Division return to work guidelines provide disability duration expectancies. The Division return to work guidelines shall be presumed to be a reasonable length of disability duration and shall be used by:

(1) health care providers to establish return to work goals or a return to work plan for safely returning injured employees to medically appropriate work environments;

(2) insurance carriers as a basis for requesting a designated doctor examination to resolve an issue regarding an injured employee's ability to return to work as well as a basis to initiate case management and to refer an injured employee to vocational rehabilitation providers; and

(3) employers, insurance carriers, health care providers, and injured employees to facilitate and improve communications

among the parties regarding the return to work goals or plans established by health care providers.

(d) The health care provider, insurance carrier, employer, and Division may consider co-morbid conditions, medical complications, or other factors that may influence medical recoveries and disability durations as mitigating circumstances when setting return to work goals or revising expected return to work durations and goals.

(e) Disability duration values in the guidelines are not absolute values and do not represent specific lengths or periods of time at which an injured employee must return to work; the values represent points in time at which additional evaluation may take place if full medical recovery and return to work have not occurred. System participants may, however, determine additional evaluation is appropriate at any time during a claim. The disability duration values depict a continuum from the minimum time to the maximum time for most individuals to return to work following a particular injury. An insurance carrier may request additional return to work information from a health care provider at any time. An insurance carrier may not use the Division return to work guidelines as justification for reducing or denying income benefits to an injured employee.

(f) For all diagnoses or injuries that are not addressed by the Division return to work guidelines, system participants shall establish disability duration parameters and return to work goals in accordance with evidence-based medicine as defined by Labor Code §401.011(18-a).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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SUBCHAPTER C. TREATMENT GUIDELINES

28 TAC §137.100

The section is proposed under Labor Code §§413.011, 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021, 402.00111, and 402.061. Labor Code §413.011 provides that the commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and sets out criteria for such adoption. In addition, this section provides that the commissioner may adopt individual treatment protocols and rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. Section 401.011 contains definitions used in the Texas workers' compensation system (in particular, §401.011(18-a), the definition of "evidence-based medicine," §401.011(22-a), the definition of "health care reasonably required" and §401.011(42), the definition of "treating doctor"). Section 413.021 requires an insurance carrier to provide the employer with return-to-work coordination services as necessary to facilitate an employee's return to employment. Section 409.005 provides the procedure for filing a report of injury, the format to be used, authorizes the adoption of rules regarding the information that must be included in the report, and requires the employer to notify the employee, the treating doctor, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. Section 408.023 requires the division to develop a list of doctors licensed in Texas who are approved to provide health care services under the Workers' Compensation Act and authorizes the commissioner to adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor. Section 408.025 authorizes the commissioner by rule to adopt requirements for reports and records, and provides that the treating doctor is responsible for maintaining efficient utilization of health care. Section 413.017 provides that certain medical services are presumed reasonable. Section 413.018 provides that the commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded and the division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided.

Section 413.013 authorizes the commissioner by rule to establish programs for prospective, concurrent, and retrospective review and resolution of disputes regarding health care treatments and services, for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments to ensure that the medical policies or guidelines are not exceeded, to detect practices and patterns by insurance carriers, and to increase the intensity of review for compliance with the medical policies or fee guidelines. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed (specifically health care that enhances the ability of the employee to return to or retain employment) and provides that, except in an emergency, all health care must be approved or recommended by the employee's treating doctor. Section 402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §§413.011, 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021.

§137.100. Treatment Guidelines.

(a) Health care providers shall provide treatment in accordance with the current edition of the *Official Disability Guidelines - Treatment in Workers' Comp* (ODG), published by Work Loss Data Institute (Division treatment guidelines), unless treatment is provided in accordance with a preauthorized treatment plan.

(b) Information on how to obtain or inspect copies of the Division treatment guidelines may be found on the Division's website: www.tdi.state.tx.us.

(c) Health care provided in accordance with the Division treatment guidelines is presumed reasonable as specified in Labor Code §413.017, and is also presumed to be health care reasonably required as defined by Labor Code §401.011(22-a).

(d) A health care provider may submit a treatment plan for provision of treatments and services that are within the Division treatment guidelines to the insurance carrier for approval in accordance with §137.300 of this title (relating to Treatment Planning).

(e) The insurance carrier is not liable for the costs of treatments or services provided in excess of the Division treatment guidelines unless:

(1) the treatments or services were provided in a medical emergency; or

(2) the treatments or services were provided in accordance with a treatment plan preauthorized under §134.600 of this title (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care).

(f) An insurance carrier may retrospectively review, and if appropriate, deny payment for treatments and services not preauthorized under subsection (d) of this section when the insurance carrier asserts that health care provided within the Division treatment guidelines is not reasonably required. The assertion must be supported by documentation of evidence-based medicine that outweighs the presumption of reasonableness established by Labor Code §413.017.

(g) A health care provider shall propose treatments or services in accordance with evidence-based medicine and submit a treatment plan to the insurance carrier for approval as provided in §137.300 of this chapter before the treatment or services are provided if:

(1) the diagnoses or injuries are omitted or not addressed by the treatment guidelines or individual treatment protocols adopted by the Commissioner of Workers' Compensation; or

(2) the services or treatments are omitted or exceed the Division treatment guidelines or treatment protocols.

(h) The insurance carrier shall not deny treatment solely because the diagnosis or treatment is not specifically addressed by the Division treatment guidelines or Division treatment protocols.

(i) This section applies to health care provided on or after January 1, 2007.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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SUBCHAPTER D. TREATMENT PLANNING

28 TAC §137.300

The section is proposed under Labor Code §§413.011, 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021, 402.00111, and 402.061. Labor Code §413.011 provides that the commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and sets out criteria for such adoption. In addition, this section provides that the commissioner may adopt individual treatment protocols and rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. Section 401.011 contains definitions used in the Texas workers' compensation system (in particular, §401.011(18-a), the definition of "evidence-based medicine," §401.011(22-a), the definition of "health care reasonably required" and §401.011(42), the definition of "treating doctor"). Section 413.021 requires an insurance carrier to provide the employer with return-to-work coordination services as necessary to facilitate an employee's return to employment. Section 409.005 provides the procedure for filing a report of injury, the format to be used, authorizes the adoption of rules regarding the information that must be included in the report, and requires the employer to notify the employee, the treating doctor, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. Section 408.023 requires the division to develop a list of doctors licensed in Texas who are approved to provide health care services under the Workers' Compensation Act and authorizes the commissioner to adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor. Section 408.025 authorizes the commissioner by rule to adopt requirements for reports and records, and provides that the treating doctor is responsible for maintaining efficient utilization of health care. Section 413.017 provides that certain medical services are presumed reasonable. Section 413.018 provides that the commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded and the division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided.

Section 413.013 authorizes the commissioner by rule to establish programs for prospective, concurrent, and retrospective review and resolution of disputes regarding health care treatments and services, for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments to ensure that the medical policies or guidelines are not exceeded, to detect practices and patterns by insurance carriers, and to increase the intensity of review for compliance with the medical policies or fee guidelines. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed (specifically health care that enhances the ability of the employee to return to or retain employment) and provides that, except in an emergency, all health care must be approved or recommended by the employee's treating doctor. Section 402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §§413.011, 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021.

§137.300. Treatment Planning.

(a) A treatment plan shall include the identification of all anticipated health care treatment and services to be provided to the injured

employee for a specified period of time. Treatment plans are required for claims when:

(1) treatment or service is anticipated to exceed or is not included in Division treatment guidelines or Division treatment protocols in accordance with §137.100 of this title (relating to Treatment Guidelines);

(2) a diagnosis is not included in Division treatment guidelines or Division return to work guidelines; or

(3) deemed necessary by the Commissioner as a result of sanctions imposed in accordance with Labor Code §408.0231(e) and (f) and other relevant sections of this title.

(b) A treating doctor may submit a treatment plan for treatments and services within the Division treatment guidelines or Division treatment protocols to the insurance carrier for approval.

(c) When a health care provider develops a treatment plan pursuant to subsection (a) or (b) of this section, it shall be submitted by the treating doctor to the insurance carrier and processed as a preauthorization request pursuant to §134.600 of this title (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care). If the health care provider is not the treating doctor, the health care provider shall submit the treatment plan to the treating doctor for submission to the insurance carrier.

(d) This section applies to health care provided on or after January 1, 2007.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER A. JUDICIARY DEPARTMENT PROCEDURES

34 TAC §§5.1, 5.4, 5.6, 5.8

The Comptroller of Public Accounts proposes amendments to §5.1, concerning definitions, §5.4, concerning claims for additional compensation for active, retired, and former district judges, §5.6, concerning expense accounts of district judges and district attorneys, and §5.8, concerning payroll procedures: district judges, criminal district judges, district attorneys, criminal district attorneys. These rules relate to procedures for paying claims made by certain judges and criminal, district, and county attorneys from the Comptroller's Office Judiciary Section appropriation.

Section 5.1 is amended to update the definition of "official mileage guide" to mean the mileage guide currently adopted by the comptroller's office. Section 5.4 is amended to update the statutory reference from the Texas Civil Statute to the Government Code. Section 5.6 is amended for clarity by adding "travel" to the title and deleting reference to outdated expense items in subsection (a)(1)(F) and subsection (c). Section 5.8 is amended to update the reference to the Internal Revenue Service form 204 which is now IRS Form W4.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendments would benefit the public by updating the procedures for requesting and paying claims from the Judiciary Section. The proposed amendment would have no fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Leonard Higgins, Comptroller's Judiciary Section, P. O. Box 13528, Austin, Texas 78711.

The amendments are proposed under Government Code, §§24.019, 43.004 and 74.061; and Code of Criminal Procedure, Articles 24.28 and 35.27.

The amendments implement Government Code, §660.043(c), §24.019; and Code of Criminal Procedure, Articles 24.28 and 35.27.

§5.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Comptroller--The comptroller of public accounts of the State of Texas.

(2) Designated headquarters--The city limits of the town in which a person's headquarters are located.

(3) Official mileage guide--The "State of Texas Travel Allowance Guide" (available in print and electronically) issued under Government Code, §660.043(c). It is intended as a guide for state employees to use[~~travel guide issued by the Statistical Research Service in 1974 and adopted by the comptroller's office as the guide to be used~~] in the calculation of mileage while on state business.

(4) Payroll period--Designates the time period for which full-time state employees receive payment for services to the state.

(5) State pay warrant--A warrant issued by the comptroller payable at the treasury for services rendered to the state.

(6) Travel voucher--An accounting document used to implement payment to state officials and employees for travel expenses incurred in the discharge of state business.

§5.4. Claims for Additional Compensation for Active, Retired, and Former District Judges.

(a) The following information must be furnished by an active, retired, or former district judge making a claim for additional compensation prior to payment being made[~~is required for claims processing~~]:

[~~(1) The claimant must furnish the following to the comptroller of public accounts for a warrant to be issued:~~]

(1) [~~(A)~~] the claimant's name and county of residence;

(2) [~~(B)~~] the district court and county in which court was held;

(3) [~~(C)~~] the judge making the assignment; and

(4) [~~(D)~~] the number of days and dates which court was held.

(b) [~~(2)~~] The information set forth in subsection (a) [~~paragraph (1)~~] of this section,[~~subsection~~] must be sworn to by the claimant [~~judge~~] before a notary public of Texas.

(c) [~~(3)~~] The claim must have the approval of the presiding judge of the claimant's [~~judge's~~] administrative judicial district, where required by law.

(d) [~~(b)~~] To receive compensation for holding court outside the county of residence and/or district, all active, retired, and former district judges must submit a claim in accordance with Government Code, §74.061[~~Texas Civil Statutes, Article 200a~~].

(e) [~~(c)~~] Failure to submit a claim will result in no warrant for compensation being issued.

§5.6. Travel and Expense Accounts of District Judges and District Attorneys.

(a) The following [~~claim~~] information must be furnished by a district judge or district attorney making a travel or expense claim prior to payment being made [~~is required~~]:

(1) [~~The claimant must submit the following information to the comptroller of public accounts for a warrant to be issued:~~]

[~~(A)~~] the claimant's name, address, title, and designated headquarters;

(2) [~~(B)~~] the dates covered by the claim;

(3) [~~(C)~~] the amount of fares for public transportation, with attached receipts;

(4) [~~(D)~~] the number of miles personally driven by the claimant;

(5) [~~(E)~~] the amount of postage expense, if any;

[~~(F) the amount of telegraph expenses, if any;~~]

(6) [~~(G)~~] the amount of telephone expense, if any;

(7) [~~(H)~~] a breakdown of the meals and lodging expense for each day; and

(8) [~~(I)~~] a statement delineating the purpose of each trip.

(b) [~~(2)~~] The information in subsection (a) of this section must be sworn to as to accuracy and correctness before a notary public.

(c) [~~(b)~~] District judges are not permitted expenses outside their judicial district except on assignment.

(d) [~~(c)~~] Allowances for the actual and necessary postage [~~,~~] and telephone[~~, and telegraph~~] expenses incurred by district judges and district attorneys will be granted only if such expenses are incurred in the discharge of their official duties within their judicial district.

(e) [~~(d)~~] If the claim presented exceeds the maximum amount appropriated by the legislature in the current appropriations act, the claim will be reduced and a warrant for the reduced amount will be issued.

§5.8. Payroll Procedures: District Judges, Criminal District Judges, District Attorneys, and Criminal District Attorneys.

(a) General. All newly elected or appointed judges and attorneys must file with the comptroller's office an IRS Form W4 [~~204 form~~] indicating their social security number, marital status, and number of exemptions claimed prior to receiving their first pay warrant.

(b) Date placed on state payroll. If the legislature is in regular session, the newly appointed judge is placed on the payroll the day his appointment is confirmed by a two-thirds vote of the senate or the day he takes the oath of office, whichever is later. If the legislature is not in session, the newly appointed judge is placed on the payroll on the day he took the oath of office. Each newly elected or appointed attorney must indicate to the comptroller's office the date the oath of office was taken and will placed on the payroll as of that date.

(c) Judge's retirement, resignation, or acceptance of another office. When a judge or attorney retires, resigns, or accepts another office, he/she must notify the comptroller's office.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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34 TAC §5.9

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §5.9, concerning travel expenses--judicial conferences. The section is being repealed because the General Appropriations Act provision upon which the rule is based has expired. The substance of the current §5.9, as it applies to district judges and district attorneys, will be included in §5.6, concerning Travel and Expense Accounts of District Judges and District Attorneys.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the repeal will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that the proposed repeal would benefit the public by updating the procedures for requesting and paying claims from the Judiciary Section. The proposed repeal would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Leonard Higgins, Comptroller's Judiciary Section, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under Government Code, §403.011.

The repeal implements Government Code, §§24.019, 43.004, and 74.025.

§5.9. Travel Expenses--Judicial Conferences.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3044

The Comptroller of Public Accounts proposes amendments to §9.3044, concerning appointment of agents for property taxes. Tax Code, §1.111(b) requires that the designation of an agent must be made by written authorization signed by the owner, a property manager authorized to designate agents for the owner, or other person authorized to act on behalf of the owner, and must clearly indicate that the person is authorized to act on behalf of the owner in property tax matters. Tax Code, §1.111(d) further prohibits the designation of more than one agent to represent a property owner in connection with "an item of property."

The rule is being amended to clarify that in the event of duplicative designations of agents resulting from additions or deletions of accounts on form 50-163, form 50-162-1 controls the appropriate agent designation. It is also being amended to clarify that registered property tax consultants may not sign forms 50-162-1 and 50-241-1 on behalf of property owners.

The rule is being amended to delete subsections (g) and (h). These provisions concern the filing of agent appointment forms before the effective date of the rule.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amended rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the amendments are in effect, the amended rule would benefit the public by providing correct information to taxpayers regarding their tax responsibilities. The proposed amendments will have no significant impact on individuals or small businesses.

Comments on the amendments may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendments are proposed under Tax Code, §1.111(h), which requires that the comptroller adopt rules to facilitate compliance with the law.

The amendments implement Tax Code, §1.111(b) and (d).

§9.3044. Appointment of Agents for Property Taxes.

(a) Except as provided by subsection (m) [~~(o)~~] of this section, a property owner shall use comptroller form 50-162-1 [~~Model Form 1.111~~] to designate an agent for property tax matters. For the purposes of this section, the term "property owner" includes a person who claims a legal interest in the property.

(b) All appraisal districts shall prepare and make available copies of comptroller form 50-162-1 [~~Model Form 1.111~~] for taxpayers to use in designating agents for property tax matters.

(c) The appointment of an agent under subsection (a) of this section is not binding on an appraisal district until the designation form is filed with the district. A person who is required to register as a property tax consultant under Occupations Code, Chapter 1152, may not sign form 50-162-1 or form 50-241-1 on behalf of a property owner. The property owner shall indicate the date the owner appoints the agent on the designation form. If the property owner files forms designating more than one agent to act in the same capacity for the same item of property, the form bearing the later date of appointment revokes the form bearing the earlier date, as of the date the form bearing the later date is filed. If a conflict arises concerning the representation of a property owner based on the owner's designation of an agent on form 50-162-1 and the agent's filing of form 50-163 for account updates, the written authorization provided by form 50-162-1 shall prevail.

(d) - (e) (No change.)

(f) For the purposes of the prohibition against designating more than one agent for a single item of property in [~~the~~] Tax Code, §1.111(d), an item of property means the property included under a single appraisal district account number. Unless the appraisal district has separately listed an improvement or the property owner presents documentation to the appraisal district showing separate ownership of land and improvements, a property owner may not designate separate agents to represent land and improvements. A property owner may, however, designate different agents to represent him in different capacities on a single item of property or on different aspects of a particular case.

[~~(g) An appraisal district may not require a property owner to file the form required by subsection (a) of this section if the owner designated an agent in writing and filed the document with the appraisal district before the effective date of this section unless the document does not contain the following information:~~]

[~~(1) the name and address of the agent;~~]

[~~(2) the name and address of the owner;~~]

[~~(3) a statement of the purposes for which the agent is designated;~~]

[~~(4) the signature of the property owner or of a person authorized under the Tax Code, §1.111, to sign agent authorizations; or~~]

[~~(5) a description of the property for which the owner originally authorized the agent's representation.~~]

[~~(h) If the appraisal district requires a new designation under subsection (g) of this section, the appraisal district shall deliver a written notice that a new designation is required, stating the reasons for the requirement, to the property owner and the designated agent.~~]

(g) [~~(i)~~] If a property owner directs delivery of tax bills or notices to an agent after the date appraisal records are certified, the chief appraiser, as soon as practicable after the designation is filed, shall notify the affected taxing unit of the property owner's name, the account number of the property, and the name and address of the agent designated for notice.

(h) [(j)] A property owner is not required to file a written designation of agent for a person who:

(1) acts as a courier for the property owner;

(2) prepares documents in a clerical capacity for the property owner;

(3) is an employee of the owner or of a corporate parent, affiliate, or subsidiary of the owner and is authorized by the owner to represent him;

(4) is an attorney licensed to practice law in the State of Texas and retained by a property owner to represent him before the appraisal district or appraisal review board; or

(5) is a mortgage lender who is authorized by a deed of trust executed by the property owner to pay taxes on the property, provided that the agency is only for the purpose of receiving tax bills from collection offices.

(i) [(k)] A person who owns property in more than one county may file a reproduction of the original signed appointment form with each appraisal district. If the chief appraiser has reason to question the authenticity of the document, the chief appraiser may require the property owner or the agent to provide the original for inspection.

(j) [(l)] In this section, the term "agent" means a person authorized to perform one or more of the following activities on behalf of the property owner:

(1) receive confidential information available to the person designating the agent, subject to the provisions of subsection (k) [(m)] of this section;

(2) negotiate or resolve any disputed tax matters;

(3) receive notices, tax statements, appraisal review board orders, and other communications from appraisal districts, appraisal review boards, and tax offices;

(4) file notices of protest;

(5) present protests before the appraisal review board; or

(6) other action required or permitted of a property owner before the appraisal district, appraisal review board, or tax office.

(k) [(m)] An agent designated by a property owner or person who claims an interest in a property may not have access to renditions, agricultural use (1)-(d) applications, or confidential sales information filed with or provided to the appraisal office by a person who has a competing claim of an interest in the property and has not designated the agent as his representative.

(l) [(n)] An agent designated to represent a property owner as required by this section, [including subsection (g) of this section,] shall use form 50-163 [Model Form 1.111-S] to provide the appraisal district with information concerning changes, additions, or deletions in the items of properties for which the agent is designated [authorized] to represent the owner.

(m) [(o)] A property owner shall use form 50-241-1 [Model Form 1.111-R] to designate an agent for property tax matters related to the owner's single-family residence. All appraisal districts shall prepare and make available to the public copies of comptroller form 50-241-1 [Model Form 1.111-R].

(n) [(p)] Forms 50-162, 50-241-1, and 50-163 [Model Form 1.111, as amended December 13, 1989, Model Form 1.111-R and Model Form 1.111-S] are adopted by reference. Copies of the forms [form] may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 16, 2006.

TRD-200604334
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

The Texas Youth Commission (the commission) proposes amendments to §§85.21, 85.23, 85.41, 85.45, 85.51, 85.55, 85.59, 85.61 and 85.69, concerning admission to and release from the commission's high restriction programs.

The amendment to §85.21 will allow the executive director to waive the designated restriction level for sentenced and Type A violent offenders, allowing for a placement of other than high restriction. The amendment also removes redundant language concerning minimum lengths of stay which is addressed in §85.25.

The amendment to §85.23 will add language concerning concurrent commitments that will be removed from §§85.59, 85.61, and 85.69.

The amendment to §85.41 will clarify that the rule applies to youth who have had the requirement to complete specialized treatment waived. The amendment further clarifies that the rule does not apply to youth placed in the Aggression Management Program only during the time they are in the program. The rule is applicable to youth who have completed the Aggression Management Program.

The amendments to §§85.45, 85.55, 85.59, 85.61, and 85.69 will remove the April 1, 2005, as the cutoff date for commitments after which youth are required to complete specialized treatment to earn release on parole. As a result of this change, all youth, regardless of commitment date, would be required to complete specialized treatment if they are determined to have the highest priority level for such treatment. Youth committed prior to April 1, 2005, who do not have sufficient time remaining on their minimum length of stay to complete the required specialized treatment program will have this requirement waived under new §87.55 which is proposed for adoption in this issue of the *Texas Register*.

The amendment to §85.51 will add the definition for Special Services Committee. This definition will be removed from §85.41.

The amended §§85.55, 85.59, and 85.61 will also include a new requirement that the Special Services Committee hold the exit interview/review within a certain number calendar days from the date a youth meets program completion requirements, according to the youth's classification. The deadline for release of an eligible youth will now be counted from the date the youth meets program completion criteria, not the date of the exit interview/review.

The amended §85.59 and §85.61 will also no longer include language concerning the discharge of a sentenced offender when he/she is transferred to the Texas Department of Criminal Justice at or before age 21 or when his/her sentence has expired. This subject is addressed in §85.65.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Neil Nichols, General Counsel, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be: 1) ensuring that youth who have the greatest need for specialized treatment are provided such treatment, provided they have sufficient time remaining on their lengths of stay; 2) providing for the timely release of youth who have met the requirements for parole release; and 3) allowing for youth to be assigned to the most appropriate placements when their unique circumstances and risk level indicate their rehabilitation would be most effective in a less restrictive setting. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.21, §85.23

The amendments are proposed under the Human Resources Code, §61.075, which provides the commission with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §61.034, which provides the commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed rules affect the Human Resources Code, §61.034.

§85.21. Program Assignment System.

(a) (No change.)

(b) Applicability.

(1) For specifics regarding classification, see §85.23 of this title [~~(relating to Classification)~~].

(2) For specifics regarding minimum length of stay, see §85.25 of this title [~~(relating to Minimum Length of Stay)~~].

(3) For specifics regarding restriction levels, see §85.27 of this title [~~(relating to Program Restriction Levels)~~].

(4) For specifics regarding completion of program and movement to another program, and for specifics on movement of sentenced offender options, refer to the following rules:

(A) for release under supervision for non-sentenced offenders, see §85.55 of this title [~~(relating to Program Completion for Other Than Sentenced Offenders)~~];

(B) for release under supervision for sentenced offenders under age 19, see §85.59 of this title[~~(relating to Program Completion for Sentenced Offenders Under Age 19)~~];

(C) for release under supervision for general offenders who have not completed the Resocialization program within the minimum length of stay, see §85.41 of this title;

(D) for discharge of sentenced offenders upon transferring to the Texas Department of Criminal Justice (TDCJ) or expiration of sentence, see:

(i) §85.61 of this title and §85.65 of this title for sentenced offenders age 19 or older; and

(ii) §85.69 for sentenced offenders adjudicated for capital murder.

[~~(C) §85.61 this title (relating to program Completion for Sentenced Age 19 or Older);~~]

[~~(D) §85.65 of this title (relating to Transfer of Sentenced Offenders to TDCJ-ID);~~]

[~~(E) §85.69 of this title (relating to Program Completion for Sentence Offenders Adjudicated for Capital Murder); and~~]

[~~(F) §85.41 of this title (relating to Maximum Length of Stay).~~]

(c) (No change.)

(d) System Description. Except as noted in subsection (f) of this section, the [~~The~~] determining factors result in the following placements [~~placement and length of stay determinations~~] for all TYC youth on initial commitment, for youth recommitted for the commission of a felony or high risk offense, and for youth found at an administrative Level I hearing to have committed a felony or high risk offense.

(1) A sentenced offender shall be [~~sentenced by the court and, regardless of risk level,~~] assigned to a program of high restriction with a fenced perimeter, regardless of risk level.

(2) A Type A violent offender shall be assigned [~~a minimum length of stay of 24 months, and with any risk level, assigned~~] to a program of high restriction with a fenced perimeter, regardless of risk level.

(3) A Type B violent offender shall be assigned [~~a minimum length of stay of 12 months, and with any risk level, assigned~~] to a program of high restriction, regardless of risk level.

(4) A chronic serious offender, controlled substances dealer, or firearms offender shall be assigned [~~a minimum length of stay of 12 months, and with any risk level, assigned~~] to a program of high restriction, regardless of risk level.

(5) A general offender shall be [~~assigned a minimum length of stay of nine (9) months, and with a~~]:

(A) with a high or medium risk level, assigned to a program of high restriction; or

(B) with a low risk level, assigned to a program of medium restriction.

(6) A Violator of Conduct Indicating a Need for Supervision (CINS) Probation shall be [~~assigned no minimum length of stay, and with~~ a]:

(A) with a high or medium risk level, assigned to a program of high restriction; or

(B) with a low risk level, assigned to a program of medium restriction.

(e) (No change.)

(f) Waivers and Exceptions. Waivers and exceptions may be granted under special circumstances.

(1) A restriction level designation, except that of sentenced offender or Type A violent offender, may be waived by the administrator of centralized placement unit or designee when a youth is qualified. A designated restriction may be waived in order to provide specialized treatment or when it is determined that a youth has a disability or [~~is physically handicapped or has~~ a] special medical condition that [~~, if such handicap or condition~~] would prevent the youth from functioning in the designated restriction level.

(2) (No change.)

(3) Any placement designation for sentenced offenders and Type A violent offenders may be waived by the executive director.

(4) [~~(3)~~] For waiver of classification, see §85.23 of this title.

(5) [~~(4)~~] For movement for population control, see §85.45 of this title [~~(relating to Movement Without Program Completion)~~].

(g) (No change.)

§85.23. Classification.

(a) - (c) (No change.)

(d) Classifications.

(1) (No change.)

(2) Type A - Violent Offender. A Type [~~type~~] A violent offender is a youth whose classifying offense is the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit one of the offenses listed in this paragraph and who has not been sentenced to commitment in TYC. TYC adopts the Texas Penal Code definition (Title 5) for each offense in its entirety except where TYC policy limits the applicability to the specific subsections or under the conditions named.

(A) murder, 19.02, all

(B) capital murder, 19.03, all

(C) sexual assault, 22.011, all

(D) aggravated sexual assault, 22.021, all

(3) Type B - Violent Offender. A Type [~~type~~] B violent offender is a youth whose classifying offense is the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit one of the offenses listed in this paragraph and who has not been sentenced to commitment in TYC. TYC adopts the Texas Penal Code definition (Title 5) for each offense in its entirety except where TYC policy limits the applicability to the specific subsections or under the conditions named.

(A) manslaughter, 19.04, all

(B) criminally negligent homicide, 19.05, all

(C) unlawful restraint, 20.02, felony only

(D) kidnapping, 20.03, all

(E) aggravated kidnapping, 20.04, all

(F) assault, 22.01, felony only

(G) indecency with a child, 21.11, all

(H) sexual assault, 22.011, all (only for youth classified before July 1, 1996)

(I) aggravated assault, 22.02, all

(J) aggravated sexual assault, 22.021, all (only for youth classified before July 1, 1996)

(K) injury to child, elderly or disabled individual, 22.04, all

(L) abandoning or endangering a child, 22.041, all

(M) deadly conduct, 22.05, felony only

(N) terroristic threat, 22.07, felony only

(O) aiding suicide, 22.08, felony only

(P) tampering with a consumer product, 22.09, all

(Q) coercing, soliciting or inducing gang membership, 22.015, felony only

(R) arson, 28.02, all

(S) robbery, 29.02, all

(T) aggravated robbery, 29.03, all

(U) burglary, 30.02, only with intent to commit any other type A or type B violent offense

(V) intoxication assault, 49.07, all

(W) intoxication manslaughter, 49.08, all

(X) intentionally participating with at least two (2) other persons in conduct at a contract program or TYC operated facility that threatens imminent harm to persons or property and substantially obstructs the performance of facility operations or a program therein.

(Y) intentionally, knowingly, or recklessly causing bodily injury to a:

(i) TYC employee;

(ii) contract program employee;

(iii) volunteer; or

(iv) person who is providing contract services at a contract program or TYC operated facility.

(Z) intentionally causing a person to come into contact with the blood, seminal fluid, vaginal fluid, urine, and/or feces of another with the intent to harass, alarm or annoy.

(4) - (8) (No change.)

(e) (No change.)

(f) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:

(1) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed

or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(2) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, but the indeterminate commitment order will be given effect until normal discharge criteria are met.

(3) Both orders are given effect, i.e., the minimum period of confinement under the determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently. The youth will not be considered for release until the minimum length of stay and the minimum period of confinement have been completed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

TRD-200604388
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 424-6014

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SUBCHAPTER C. MOVEMENT WITHOUT PROGRAM COMPLETION

37 TAC §85.41, §85.45

The amendments are proposed under the Human Resources Code, §61.075, which provides the commission with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §61.034, which provides the commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed rules affect the Human Resources Code, §61.034.

§85.41. Maximum Length of Stay.

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) Definitions pertaining to this rule are under §85.51 of this title, unless otherwise noted herein.

(3) [~~(2)~~] This rule does not apply to:

(A) youth who are unable to progress further in the agency's rehabilitation program because of mental illness or mental retardation and who have completed their minimum lengths of stay, see §87.79 of this title regarding such youth;

(B) any other movement without program completion or general offenders who have completed program requirements;

(C) youth assessed as priority 1 for specialized treatment[~~youth~~] who have not completed[~~are eligible for admission to~~] specialized treatment programs (unless this requirement is waived by the assistant deputy executive director for rehabilitation and the assistant deputy executive director for juvenile corrections). See §85.51 of this title for an explanation of specialized treatment for priority 1 youth; or

(D) general offenders who have not completed [~~whose placement is in~~] the Aggression Management Program to which they have been assigned [~~(AMP)~~] or who are assigned to a Behavior Management Program [~~(BMP)~~].

(c) Explanation of Terms Used.

[~~(1) Exit review/interview- means a review of documentation to determine whether the youth meets the requirements of this rule for release under parole supervision. In TYC high restriction facilities the exit review is conducted by the Special Services Committee (as defined in paragraph (4) of this subsection) and in contract care programs it is conducted by the quality assurance supervisor.~~]

(1) [~~(2)~~] General Offender - means a youth who is classified as a general offender as defined in §85.23 of this title and has never been classified as a sentenced or Type A violent offender.

(2) [~~(3)~~] Minimum Length of Stay - means the initial assigned minimum length of stay for the youth's classification, see §85.25 of this title for minimum length of stay requirements. For youth who are returned to a high restriction facility with no minimum length of stay, the admission date will be treated as the date the youth has completed the minimum length of stay under this rule.

[~~(4) Special Services Committee (SSC)- the SSC is a standing committee that consists of at least five (5) members and must include:~~]

[~~(A) Director of Clinical Services (DOCS), Chairperson;~~]

[~~(B) Program Administrator (1 to 3); and~~]

[~~(C) Principal.~~]

(d) Criteria for Release to TYC Parole. General offenders who have completed their minimum length of stay, but have not earned Phase 4 on all three components of Resocialization, see §87.3 of this title for Resocialization phase requirements, will be released to TYC parole (home or home substitute) when the following requirements are met:

(1) no confirmed Category I rule violations through a due process hearing within 30 days prior to the [~~SSC~~] exit review;

(2) - (4) (No change.)

(e) Loss of Release Eligibility. Eligibility for release is lost when, after the exit review, a youth commits a Category 1 rule violation that is[~~as~~] confirmed through a due process hearing [~~after the exit review~~]. A youth who loses release eligibility will not be eligible for release until such time as the youth meets release criteria as set forth in subsection (d) of this section and a subsequent [~~SSC~~] exit review confirms release eligibility.

(f) Timing of Exit Review and Release Date.

(1) (No change.)

(2) Youth who meet release criteria to TYC parole under this rule must be released[~~release~~] within 30 calendar days of the exit review, unless an extension has been granted beyond the 30 calendar days. Upon [~~the~~] approval of[~~by~~] the appropriate director of juvenile corrections, additional time may be granted beyond the 30 calendar days, but not to exceed 60 calendar days from the exit review, to address placement concerns.

(g) Notification. TYC will notify the committing juvenile court [~~judge~~], the prosecuting attorney, the parole officer, and the

[~~county~~] chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the release.

§85.45. Movement Without Program Completion

(a) (No change.)

(b) Applicability. [~~This rule does not apply to:~~]

(1) Definitions pertaining to this rule are under §85.51 of this title.

(2) This rule does not apply to:

(A) [~~(1)~~] disciplinary movements, see Chapter 95, Subchapter A of this title for disciplinary practices[~~(relating to Disciplinary Practices)~~]; and

(B) [~~(2)~~] non-sentenced offenders at age 21 who have not met program completion criteria, see §85.95 of this title for discharge or transfer of custody procedures [~~(relating to Discharge/Transfer of Custody)~~].

(c) General Requirements.

(1) (No change.)

(2) A plan to minimize risk factors for re-offending shall be developed for each youth prior to release, unless the youth is to be discharged.

(3) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE) pursuant to [~~. Refer to (GAP)~~] §85.79 of this title [~~(relating to Parole of Undocumented Foreign Nationals)~~].

(4) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title regarding victim notification rights [~~(relating to Rights of Victims)~~].

(5) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title regarding sex offender registration requirements [~~(relating to Sex Offender Registration)~~].

(6) (No change)

(d) Transition Movements.

(1) (No change)

(2) Transition Criteria for Youth in Programs where Resocialization is Administered. Youth will be eligible for transition from a high or medium restriction (initial placement) facility to a medium restriction placement when the following criteria have been met:

(A) - (D) (No change.)

(E) [~~for youth committed after April 1, 2005,~~] completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(3) Transition Criteria for Youth in Contract Care Programs where Resocialization is Not Administered. Youth in high restriction contract care programs where Resocialization is not administered will be eligible for transition to a medium restriction placement when the following criteria have been met:

(A) - (E) (No change.)

(F) complete a plan that :[~~identifies goals and a plan of action to achieve goals and that identifies obstacles that will support successful re-entry into the community~~]

(i) identifies goals and a plan of action to achieve the identified goals; and

(ii) identifies obstacles that will hinder successful re-entry into the community.

(4) Decision Authority for Approval of Transition.

(A) (No change.)

(B) The final decision authority is:

(i) the superintendent if the [~~, for~~] youth is assigned to a TYC-operated placement [~~placements~~]; or

(ii) the quality assurance supervisor if the [~~, for~~] youth is assigned to a contract care placement [~~placements~~].

(e) Population Control Releases. When overpopulation occurs in any high restriction facility, certain remedial actions are taken. The deputy executive director may cancel or revise any population control measure in effect or implement any other youth movement option when necessary to control population and/or manage available funds concerning youth in residential placement.

(1) (No change.)

(2) Release Criteria.

(A) The following youth are ineligible for population control release:

(i) - (iii) (No change.)

(iv) Priority 1 specialized treatment youth who have not completed treatment (unless the treatment requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections); and[~~or~~]

(v) (No change.)

(B) (No change.)

(f) - (g) (No change.)

(h) Youth with Mental Illness or Mental Retardation [~~Mentally Ill and Mentally Retarded Youth. Certain~~]. Pursuant to §85.79 of this title, certain youth shall be discharged following application for appropriate services to address their mental illness or mental retardation. [~~See §85.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth.~~]

(i) Notification. TYC will notify the committing juvenile court [~~judge~~], the prosecuting attorney, the parole officer, and the [~~county~~] chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the transition or release.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

TRD-200604389

Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 424-6014

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SUBCHAPTER D. PROGRAM COMPLETION

37 TAC §§85.51, 85.55, 85.59, 85.61, 85.69

The amendments are proposed under the Human Resources Code, §61.075, which provides the commission with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §61.034, which provides the commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed rules affect the Human Resources Code, §61.034.

§85.51. Definitions.
The following words and terms, as used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) (No change.)

(2) Classification--the designation assigned each youth based on the youth's offense history, the classifying offense, and a finding regarding extenuating circumstances incident to the classifying offense. See §85.23 of this title for classification assignments [~~(relating to Classification)~~].

(3) Exit review/interview--is a process by which the Special Service Committee (SSC)[~~,~~] for high restriction, [~~or~~] the superintendent for medium restriction or the quality assurance supervisor for contract care programs, determines whether the youth meets program completion criteria and whether the transition/release Individual Case Plan (ICP) adequately addresses the youth's identified risk factors for re-offending. The SSC is required to conduct a face-to-face interview with sentenced and Type A offenders, along with review and approval of the release packet.

(4) High restriction and medium restriction--see definitions in §85.27 of this title [~~(relating to Program Restriction Levels)~~].

(5) - (6) (No change).

(7) Initial placement [~~Placement~~]--a placement to which youth are assigned following a period of assessment at the Marlin Orientation Assessment Unit (MOAU) upon being committed to TYC.

(8) Minimum length of stay (MLOS) and Minimum period of confinement (MPC)--see definitions in §85.25 of this title [~~(relating to Minimum Length of Stay)~~].

(9) (No change.)

(10) Program completion criteria--the criteria which a youth must meet while in the current program in order to move to a placement of less restriction. Program completion criteria are based on youth's classification and the phase of the Resocialization program, which are outlined in Subchapter C of this chapter [~~(relating to Program Completion and Discharge)~~].

(11) - (13) (No change.)

(14) Special Services Committee (SSC)--the SSC is a standing committee that consists of at least five (5) members and must include:

(A) director of clinical services (DOCS), chairperson;

(B) program specialist (1 to 3); and

(C) principal.

(15) [~~(14)~~] Specialized treatment for Priority 1 youth--upon admission to TYC, all youth undergo clinical assessments to determine specialized treatment needs. Youth are prioritized for treatment based on risk, offense classification, and/or diagnosis. Youth with the greatest need for any of the following treatment programs will be required to successfully complete the program prior to release eligibility:

(A) Sexual Behavior Treatment Program;

(B) Chemical Dependency Treatment Program; or

(C) Capital and Serious Violent Offender Treatment Program.

(16) [~~(15)~~] Transfer--is a movement of sentenced offenders to either Texas Department of Criminal Justice - Institution Division (TDCJ-ID) or Texas Department of Criminal Justice - Parole Division (TDCJ-PD) when:

(A) ordered by the juvenile court; or

(B) meets transfer criteria pursuant to §85.65 of this title [~~(relating to Discharge of Sentenced Offenders Upon Transfer to TDCJ or Expiration of Sentence~~]; or

(C) youth at age 21 who was sentenced for capital murder where the offense was committed on or after September 1, 2003 and who has not completed the sentence will be transferred to TDCJ-PD without the juvenile court's [~~courts~~] approval; or

(D) youth at age 21 who was sentenced for any offense other than capital murder and who has not completed the sentence in high restriction facilities will be transferred to TDCJ-PD without the juvenile court's[~~courts~~] approval.

(17) [~~(16)~~] Transfer packet--includes specific documents for review and approval prior to transfer of a youth to the Texas Department of Criminal Justice - Institutional Division (TDCJ-ID) or Texas Department of Criminal Justice - Parole Division (TDCJ-PD). The documents are organized in tabbed sections in a notebook to form the transfer packet.

(A) The transfer packet for TDCJ-PD includes the following information:

(i) forensic psychological evaluation;

(ii) transition/release plan;

(iii) incident summary;

(iv) specialized treatment summary, if applicable; and

(v) victim involvement information, if applicable.

(B) The transfer packet for TDCJ-ID includes the following information:

(i) forensic psychological evaluation;

(ii) specialized treatment summary, if applicable;

(iii) behavior summary;

(iv) incident summary; and

(v) victim involvement information, if applicable.

(18) [~~(17)~~] Transition--is a movement from one program site to another for purposes of facilitating the youth's adjustment to the

community when youth who have met the required transition criteria. Transition is always to placement of equal or less restriction than that of the current placement. Transition is not a type of placement or a status. For transition criteria, see §85.45 of this title [(relating to Movement Without Program Completion)].

(19) [(18)] Transition/Release plan--consists[consist] of a transition/release individual case plan (ICP) for youth who are moving from one program to another or from one facility to a different facility. The transition/release ICP identifies risk factors and protective factors that enable youth and staff to develop plans to minimize risk and take advantage of protective factors.

(20) [(19)] Type A Violent Offender, Type B Violent Offender, Chronic Serious Offender, Controlled Substances Dealer, Firearms Offender, and General Offender--see definitions in §85.23 of this title [(relating to Classification)].

(21) [(20)] Type 1 offenses--the offenses for which a youth has been given a determinate sentence, specifically: the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit murder, capital murder, sexual assault, or aggravated sexual assault.

(22) [(21)] Type 2 offenses--all other offenses, except Type 1 offenses, for which a youth has been given a determinate sentence.

§85.55. Program Completion for Other Than Sentenced Offenders.

(a) (No change.)

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title [(relating to Definitions)].

(2) For specific information regarding Resocialization phase requirements and assessment, see §87.3 of this title.

(3) [(2)] This rule does not address disciplinary movements. See Chapter 95, Subchapter A of this title for disciplinary practices [(relating to Disciplinary Practices)].

(4) [(3)] This rule does not apply to sentenced offenders. Rules pertaining to program completion or discharge for sentenced offenders are:

(A) for offenders under age 19, see §85.59 of this title [(relating to Program Completion for Sentenced Offenders Under Age of 19)];

(B) for offenders age 19 or older, see §85.61 of this title [(relating to Program Completion for Sentenced Offenders Age 19 or Older)];

(C) for discharge upon transfer to Texas Department of Criminal Justice or expiration of sentence, see §85.65 of this title [(relating to Discharge of Sentenced Offenders Upon Transfer to TDCJ or Expiration of Sentence)]; and

(D) for offenders adjudicated for capital murder, see §85.69 of this title [(relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder)].

(5) [(4)] This rule [policy] does not apply to youth transitioning to medium restriction placement, see §85.45 of this title for transitioning criteria [(relating to Movement Without Program Completion)].

(6) [(5)] This rule does not address discharging of a non-sentenced offender youth. For discharge criteria for non-sentenced offenders, [For discharge criteria,] see §85.95 of this title [(relating to Parole Completion and Discharge)].

(c) General Requirements.

(1) (No change.)

(2) A plan to minimize risk factors for re-offending shall be developed for each youth prior to release, unless the youth is to be discharged.

(3) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title for victim notification procedures [(relating to Rights of Victims)].

(4) [All residential programs releasing an undocumented foreign national youth must notify] Immigration and Customs Enforcement (ICE) must be notified when releasing an undocumented foreign national youth. Refer to §85.79 of this title for notification procedures regarding undocumented foreign national youth [(relating to Parole of Undocumented Foreign Nationals)].

(5) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title for sex offender registration procedures [(relating to Sex Offender Registration)].

(6) (No change.)

(d) Program Completion Criteria.

(1) Youth Whose Classifying Offense is Other Than a Sentenced Offender. Youth whose classifying offense is other than a sentenced offender will be eligible for release to TYC parole (home or home substitute) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the Special Services Committee (SSC) exit interview/review [interview]; and

(B) - (D) (No change.)

(E) [for youth committed after April 1, 2005,] completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(2) Youth in Contract Care Programs Where Resocialization is Not Administered. Youth in high or medium restriction contract care programs where Resocialization is not administered will be eligible for release to TYC parole (home or home substitute) when the following criteria have been met:

(A) - (E) (No change.)

(F) complete a plan that:

(i) (No change).

(ii) identifies obstacles that will hinder[support] successful re-entry into the community.

(e) Decision Authority for Approval of Release.

(1) For Type A Violent Offenders. The final decision authority shall approve the youth's release upon a determination that the youth meets [all] program completion criteria as set forth in subsection (d) [requirements and the transition/release ICP adequately addresses risk factors]. The final decision authority is the executive director.

(2) For Other Than Type A Violent Offenders. The final decision authority shall approve the youth's release upon a determination that the youth meets [~~all~~] program completion criteria as set forth in subsection (d) [~~requirements and the transition/release Individual Case Plan (ICP) adequately addresses risk factors~~]. The final decision authority is:

(A) the superintendent, for other than Type A violent offenders assigned to residential placements; or

(B) the quality assurance supervisor, for other than Type A violent offenders assigned to contract placements.

(f) Phase Ineligibility for Type A Violent Offenders.

(1) Remediation. To maintain eligibility for release, a Type A violent offender youth may receive only one remediation [~~placement~~] in any Resocialization phase area [~~pursuant to §87.3 of this title (relating to Resocialization Phase Requirements and Assessment)~~] at any time [~~anytime~~] after the exit interview. If the youth does not maintain Academic/Workforce Development (A) or Correctional Therapy (C) phase 4 objectives, the youth will be phase ineligible and will lose release eligibility pursuant to subsection (g) of this section.

(2) Demotion. To maintain eligibility for release, a Type A violent offender youth may only receive one demotion in Behavior (B) phase at any time [~~anytime~~] after the exit interview. If the youth does not regain B4 at the next phase assessment, the youth will be phase ineligible and will lose release eligibility pursuant to subsection (g) of this section.

(g) Loss of Release Eligibility. A youth who loses release eligibility will not be eligible for release until such time as the youth meets program completion criteria and a subsequent SSC exit interview confirms release eligibility. Eligibility for release is lost when any of the following occur after the exit interview:

(1) youth commits a Category 1 rule violation that is [~~as~~] confirmed through a due process hearing; or

(2) a Type A violent offender youth fails to maintain phase eligibility [~~is phase ineligible~~] as described in subsection (f) of this section.

(h) Release Date.

(1) For Type A Violent Offenders. [~~Youth who meet the program completion requirements for release to TYC parole under this rule must be released within 120 calendar days of the exit interview, unless a youth:~~]

(A) The SSC must hold an exit interview within 14 calendar days from the date a youth meets program completion criteria as set forth in subsection (d) of this section.

(B) If the SSC confirms the youth meets program completion criteria, the youth shall be released within 120 calendar days after date the youth met program completion criteria, unless the youth:

(i) is placed on remediation in A or C phase after the exit interview, in which case the 120-day deadline will be extended up to 30 days to allow the youth to meet phase objectives to avoid possible demotion. The Department of Sentenced Offender Disposition will determine the duration of the extension; or

(ii) receives a one-phase demotion in B phase after the exit interview, in which case the 120-day deadline will be extended up to 30 days to allow the youth to regain phase B4. The Department of Sentenced Offender Disposition will determine the duration of the extension; or

(iii) loses release eligibility as set forth in subsection (g) of this section.

(C) If the SSC confirms the youth does not meet program completion criteria, the youth will not be eligible for release until such time as the youth meets program completion criteria as set forth in subsection (d) of this section.

[~~(A) is placed on remediation in A or C phase after the exit interview, in which case the 120-day deadline may be extended up to 30 days to allow the youth to meet phase objectives to avoid possible demotion. Such extension will be determined by the Department of Sentenced Offender Disposition; or~~]

[~~(B) receives a demotion in B phase, after the exit interview, in which case the 120-day deadline may be extended up to 30 days to allow the youth to regain phase B4. Such extension will be determined by the Department of Sentenced Offender Disposition.~~]

(2) For Other Than Type A Violent Offenders. [~~Youth who meet the program completion requirements for release to TYC parole under this rule must be released within 14 calendar days of the exit review, unless an extension has been granted beyond the 14 calendar days. Upon the approval by the appropriate director of juvenile corrections, additional time may be granted beyond the 14 calendar days, but not to exceed 30 calendar days from the exit review, to address serious concerns related to the well-being of the youth and/or the community.~~]

(A) The SSC must hold an exit review within seven (7) calendar days from the date a youth completes program completion criteria as set forth in subsection (d) of this section.

(B) If the SSC confirms the youth meets program completion criteria, the youth shall be released within 14 calendar days after date the youth met program completion criteria, unless an extension has been granted beyond the 14 calendar days. Upon approval by the appropriate director of juvenile corrections, additional time may be granted beyond the 14 calendar days, but not to exceed 30 calendar days from the exit review, to address serious concerns related to the well-being of the youth and/or the community.

(C) If the SSC confirms the youth does not meet program completion criteria, the youth will not be eligible for release until such time as the youth meets program completion criteria as set forth in subsection (d) of this section.

(i) Notification. TYC will notify the committing court juvenile [~~judge~~], the prosecuting attorney, the parole officer, and the [~~county~~] chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the release.

§85.59. Program Completion for Sentenced Offenders Under Age 19.

(a) Purpose. The purpose of this rule is to establish criteria and the approval process for release of youth upon program completion.

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title [~~(relating to Definitions)~~].

(2) For specific information regarding Resocialization phase requirements and assessment, see §87.3 of this title.

(3) [~~(2)~~] This rule does not address disciplinary movements. See Chapter 95, Subchapter A of this title for disciplinary practices [~~(relating to Disciplinary Practices)~~].

(4) [~~(3)~~] This rule does not apply to youth committed to TYC on indeterminate commitments. See §85.55 of this title for program completion criteria for non-sentenced offenders [~~(relating to Program Completion for Other Than Sentenced Offenders)~~].

(5) [~~(4)~~] This rule does not apply to sentenced offenders age 19 or older, or to the discharge of sentenced offenders to the Texas Department of Criminal Justice[-](TDCJ). [~~See §85.65 of this title (relating to Discharge of Sentenced Offenders Upon Transfer to TDCJ or Expiration of Sentence), §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older) and §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).~~]

(A) For sentenced offenders age 19 or older, see §85.61 of this title;

(B) For discharge upon transfer to TDCJ or expiration of sentence, see §85.65 of this title; and

(C) For sentenced offenders adjudicated for capital murder, see §85.69 of this title.

[~~(c) General Restrictions. Due to the nature of determinate sentences, some rules governing the classification, placement, release, transition, parole status, discharge and disciplinary movement of sentenced offenders must be applied differently. Specifically:~~]

[~~(1) Classification. A youth classified at commitment as a sentenced offender shall retain a sentenced offender classification as long as the youth remains under the jurisdiction of TYC as a result of that commitment. The offense for which the youth received the determinate sentence will remain the youth's classifying offense until the sentence has expired even if the youth's TYC parole is revoked following a Level I hearing. See §85.23 of this title (relating to Classification).~~]

[~~(2) Initial Placement. On initial placement, all sentenced offenders shall be assigned to high restriction facilities unless the deputy executive director waives such placement for a particular youth.~~]

(c) [~~(d)~~] General Requirements.

(1) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(2) [~~Sentenced Offender Review.~~] The Special Services Committee (SSC) shall evaluate the youth:

(A) six (6) months after admission to TYC;

(B) when the minimum period of confinement (MPC) is complete; and

(C) at other times as requested by the committee.

(3) A plan to minimize risk factors for re-offending shall be developed for each youth prior to release, unless the youth is to be discharged.

(4) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title for victim notification procedures [~~(relating to Rights of Victims)~~].

(5) [~~All residential programs releasing an undocumented foreign national youth must notify~~] Immigration and Customs Enforcement (ICE) must be notified when releasing an undocumented foreign national youth. Refer to §85.79 of this title for notification procedures for youth who are undocumented foreign nationals [~~(relating to Parole of Undocumented Foreign Nationals) for procedures~~].

(6) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title for sex offender registration procedures [~~(relating to Sex Offender Registration)~~].

(7) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to notify parents or guardians of any movement.

(8) [~~Placement.~~] Sentenced Offenders shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless [~~the youth~~]:

(A) the youth is transferred to TDCJ-Institution Division in accordance with legal requirements or committing court approval. See §85.65 of this title; or

(B) the youth is approved by the committing court to attain parole status prior to completion of serving the MPC; or

(C) the youth's sentence expires before the MPC expires; or [.]

(D) the executive director waives such placement.

[~~(9) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when he/she is transferred to TDCJ (before or at age 21) or his/her sentence is complete (except as specified in subsection (d)(10) of this section).~~]

[~~(10) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:~~]

[~~(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.~~]

[~~(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, but the indeterminate commitment order will be given effect until normal discharge criteria are met.~~]

[~~(C) Both orders are given effect, i.e., the MPC under the determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently. The youth will not be considered for release until the minimum length of stay and the MPC has been completed.~~]

(d) [~~(e)~~] Program Completion Criteria.

(1) A sentenced offender youth whose offense was committed before September 1, 2005 will be eligible for a release from a high restriction facility to TYC parole (home or home substitute) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsections (e) - (h) [~~(f) - (i)~~] of this section; and

(C) completion of the MPC; and

(D) the youth is currently assessed at Resocialization phase A4,B4,C4 with no objectives or sub-objectives under remediation; and

(E) [for youth committed after April 1, 2005,] completion of specialized treatment (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(2) A sentenced offender youth whose offense was committed on or after September 1, 2005, may be considered for release [will be eligible for a release from a high restriction facility] to TYC parole (home or home substitute) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsections (e) - (h) [(f) - (i)] of this section; and

(C) completion of all but nine (9) months of his/her sentence if the youth's sentence expires before the MPC, or [upon] completion of the MPC if the sentence does not expire before the MPC; and

(D) the youth is currently assessed at Resocialization phase A4,B4,C4 with no objectives or sub-objectives under remediation; and

(E) completion of specialized treatment (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(e) [(f)] Decision Authority for Approval of Release. The final decision authority shall approve the youth's release upon a determination that the youth meets program completion criteria as set forth in subsection (d) [requirements and the transition/release individual case plan (ICP) adequately addresses risk factors]. The final decision authority for approval of release is:

(1) the deputy executive director, for Type 1 sentenced offenders; or

(2) the appropriate director of juvenile corrections, for Type 2 sentenced offenders.

(f) [(g)] Phase Ineligibility.

(1) Remediation. Except as specified in subsection (g) [(h)] (2) of this section, to maintain eligibility for release, a youth may receive only one remediation in Academic/Workforce Development (A) or Correctional Therapy (C) phase [pursuant to §87.3 of this title (relating to Resocialization Phase Requirements and Assessment)] at any time [anytime] after the exit interview. If the youth does not maintain A or C phase 4 objectives, the youth will be phase ineligible and will lose release eligibility pursuant to subsection (g) [(h)] of this section.

(2) Demotion. Except as specified in subsection (g) [(h)] (2) of this section, to maintain eligibility for release, a youth may only receive one demotion in Behavior (B) phase at any time [anytime] after the exit interview. If the youth does not regain B4 at the next phase assessment, the youth will be phase ineligible and will lose release eligibility pursuant to subsection (g) [(h)] of this section.

(g) [(h)] Loss of Release Eligibility.

(1) Except as described in paragraph (2) below, a youth who loses release eligibility will not be eligible for release until such time as the youth meets program completion criteria and a subsequent SSC exit interview confirms release eligibility. Eligibility for release is lost when any of the following occurs [occur] after the exit interview:

(A) youth commits a Category 1 rule violation that is [as] confirmed through a due process hearing; or

(B) youth is phase ineligible as described in subsection (f) [(g)] of this section.

(2) A youth whose offense was committed on or after September 1, 2005, and who is being considered for release nine (9) months prior to his/her sentence completion (pursuant to subsection (d)[(e)] (2) of this section) will lose eligibility for release, and will remain in high restriction until his/her sentence has expired, if when any of the following occur after the exit interview:

(A) the youth commits a Category 1 rule violation that is [as] confirmed through a due process hearing; or

(B) the youth receives a demotion of one or more phases in any Resocialization phase area; or

(C) the youth is placed on remediation in A or C phase.

(h) [(i)] Release Date. [Youth who meet the program completion requirements for release to TYC parole under this rule must be released within 120 calendar days of the exit interview, unless a youth:]

(1) The SSC must hold an exit interview within 14 calendar days from the date a youth meets program completion criteria as set forth in subsection (d) of this section.

(2) If the SSC confirms the youth meets program completion criteria, the youth shall be released within 120 calendar days after the date the youth met program completion criteria, unless the youth:

(A) [(1)] is placed on remediation in A or C phase after the exit interview, in which case the 120-day deadline will [may] be extended up to 30 days to allow the youth to meet phase objectives to avoid possible demotion. The Department of Sentenced Offender Disposition will the determine the duration of the extension [Such extension will be determined by the Department of Sentenced Offender Disposition]; or

(B) [(2)] receives a one-phase demotion in B phase after the exit interview, in which case the 120-day deadline will [may] be extended up to 30 days to allow the youth to regain phase B4. The Department of Sentenced Offender Disposition will the determine the duration of the extension; or [Such extension will be determined by the Department of Sentenced Offender Disposition.]

(C) loses release eligibility as set forth in subsection (g) of this section.

(3) Except for youth described in subsection (g)(2) of this section, when the SSC confirms that a youth does not meet program completion criteria, the youth will not be eligible for release until such time as the youth meets program completion criteria as set forth in subsection (d) of this section.

(i) [(j)] Notification. TYC will notify the committing juvenile court [judge], the prosecuting attorney, the parole officer, and the [county] chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the release.

§85.61. Program Completion for Sentenced Offenders Age 19 and Older.

(a) Purpose. The purpose of this rule is to establish criteria and the approval process for transferring a sentenced offender youth age 19 or older upon program completion to the Texas Department of Criminal Justice - Parole Division (TDCJ-PD).

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title [~~(relating to Definitions)~~].

(2) For specific information regarding Resocialization phase requirements and assessment, see §87.3 of this title.

(3) [~~(2)~~] This rule does not address disciplinary movements. See Chapter 95, Subchapter A of this title for disciplinary consequences [~~(relating to Disciplinary Practices)~~].

(4) [~~(3)~~] This rule does not apply to:

(A) youth committed to TYC on indeterminate commitments. See §85.55 of this title for program completion criteria for non-sentenced offenders [~~(relating to Program Completion for Other Than Sentenced Offenders)~~];

(B) sentenced offenders who are under the age of 19. See §85.59 of this title for program completion criteria for sentenced offenders under age 19 [~~(relating to Program Completion for Sentenced Offenders Under Age 19)~~];

(C) sentenced offenders who have not met program completion criteria or whose sentence has expired . See §85.65 of this title for discharge of sentenced offenders upon transfer to TDCJ or expiration of sentence; or [~~(relating to Discharge of Sentenced Offenders~~] Upon Transfer to TDCJ or Expiration of Sentence).]

(D) sentenced offenders adjudicated for capital murder, see [~~. See~~] §85.69 of this title [~~(relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder)~~].

[~~(c) General Restrictions. Refer to §85.59 of this title for the list of general restrictions.~~]

(c) [~~(d)~~] General Requirements.

(1) The Special Services Committee (SSC) shall evaluate the youth:

(A) six (6) months after admission to TYC;

(B) when the minimum period of confinement (MPC) is complete;

(C) on or about the youth's 20th birthday, to determine eligibility for transfer to TDCJ-Institution Division (TDCJ-ID) or TDCJ-PD; and

(D) at other times as requested by the committee.

(2) A plan to minimize risk factors for re-offending shall be developed for each youth prior to transfer to TDCJ-PD.

(3) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title for victim notification procedures [~~(relating to Rights of Victims)~~].

(4) [~~All residential programs releasing an undocumented foreign national youth must notify~~] Immigration and Customs Enforcement (ICE) must be notified when transferring an undocumented foreign national youth. Refer to §85.79 of this title for notification procedures for youth who are undocumented foreign nationals [~~(relating to Parole of Undocumented Foreign Nationals)~~ ~~for procedures~~].

(5) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title for sex offender registration procedures [~~(relating to Sex Offender Registration)~~].

(6) Youth 18 or older must give consent to disclose any movement information to a parent.

(7) [~~Placement.~~] Sentenced offenders shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless [~~the youth~~]:

(A) the youth is transferred to TDCJ-ID in accordance with legal requirements or committing court approval. See §85.65 of this title; or

(B) the youth is approved by the committing court to attain parole status prior to completion of serving the MPC; or

(C) the youth's sentence expires before the MPC expires; or[~~.~~]

(D) the executive director waives such placement.

[~~(8) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when he/she is transferred to TDCJ or his/her sentence is complete (except as specified in subsection (d)(9) of this section).~~]

[~~(9) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:~~]

[~~(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.~~]

[~~(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, and the youth is discharged from the indeterminate commitment order upon completion of the indeterminate offense.~~]

[~~(C) The determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently. The youth will not be considered for transfer until the minimum length of stay and the MPC has been completed.~~]

(d) [~~(e)~~] Program Completion Criteria.

(1) A sentenced offender youth who is between age 19 and 21 in high restriction facilities will be transferred to TDCJ-PD (court approval is not required) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing[~~,~~] within 90 days prior to the SSC exit interview; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsections (e) - (g) [~~(f) - (g)~~] of this section; and

(C) completion of the MPC; and

(D) the youth is currently assessed at Resocialization phase A4,B4,C4 with no main objectives or sub-objectives [~~indicators~~] under remediation; and

(E) [~~for youth committed after April 1, 2005,~~] successful completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(2) A sentenced offender youth in a high restriction facility whose offense was committed on or after September 1, 2005, [~~and whose sentence expires before the MPC~~] may be considered for trans-

fer to TDCJ-PD (court approval is not required) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing[,] within 90 days prior to the SSC exit interview;

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsections (e) - (g)[(f) - (i)] of this section;

(C) completion of all but nine (9) months of his/her sentence if the youth's sentence expires before the MPC, or completion of the MPC if the sentence does not expire before the MPC;

(D) the youth is currently assessed at Resocialization phase A4, B4, C4 with no objectives or sub-objectives under remediation; and

(E) completion of specialized treatment (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(e) [(f)] Decision Authority for Approval of Transfer. Sentenced offender youth between age 19 and 21 shall not be transferred to TDCJ-PD until the final decision authority has determined that the youth meets program completion criteria as set forth in subsection (d)[and the transfer packet adequately addresses risk factors]. The final decision authority is the deputy executive director.

(f) [(g)] Phase Ineligibility.

(1) Remediation. Except as specified in subsection (g)(2) [(h)(2)] of this section, to maintain eligibility for transfer, a youth may receive only one remediation in Academic/Workforce Development (A) or Correctional Therapy (C) phase [pursuant to §87.3 of this title (relating to Resocialization Phase Requirements and Assessment)] at any time [anytime] after the exit interview. If the youth does not maintain A or C phase 4 objectives, the youth will be phase ineligible and will lose transfer eligibility pursuant to subsection (g) [(h)] of this section.

(2) Demotion. Except as specified in subsection (g)(2) [(h)(2)] of this section, to maintain eligibility for transfer, a youth may only receive one demotion in Behavior (B) phase at any time [anytime] after the exit interview. If the youth does not regain B4 at the next phase assessment, the youth will be phase ineligible and will lose transfer eligibility pursuant to subsection (g) [(h)] of this section.

(g) [(h)] Loss of Transfer Eligibility to TDCJ-PD.

(1) Except as described in paragraph (2) below, a youth who loses transfer eligibility will not be eligible to transfer until such time as the youth meets program completion criteria. Eligibility for transfer is lost when any of the following occurs [occur] after the exit interview:

(A) youth commits a Category 1 rule violation that is [as] confirmed through a due process hearing; or

(B) youth is phase ineligible as described in subsection (f) [(g)] of this section.

(2) A youth whose offense was committed on or after September 1, 2005, and who is being considered for transfer nine (9) months prior to his/her sentence completion (pursuant to subsection (d)(2) of this section) will lose eligibility for transfer, [under subsection (e)(2) will lose eligibility for such a transfer,] and will remain in high restriction until his/her sentence has expired, if after the exit interview [when any of the following occur after the exit interview]:

(A) the youth commits a Category 1 rule violation that is [as] confirmed through a due process hearing; or

(B) the youth receives a demotion in B phase; or

(C) the youth is placed on remediation in A or C phase.

(h) [(i)] Transfer Date to TDCJ-PD. [Youth who meet the program completion requirements for transfer to TDCJ-PD under this rule must be transferred within 120 calendar days of the exit interview, unless a youth:]

(1) The SSC must hold an exit interview within 14 calendar days from the date a youth meets program completion criteria as set forth in subsection (d) of this section.

(2) If the SSC confirms the youth meets program completion criteria, the youth shall be transferred within 120 calendar days after the date the youth met program completion criteria, unless:

(A) the Department of Sentenced Offender Disposition has not received notification of parole conditions from TDCJ to confirm the transfer date, in which case the 120-day deadline will be extended to determine the status of the transfer request. The Department of Sentenced Offender Disposition will determine the duration of the extension; or

(B) [(1)] the youth is placed on remediation in A or C phase after the exit interview, in which case the 120-day deadline will [may] be extended up to 30 days to allow the youth to meet phase objectives to avoid possible demotion. The Department of Sentenced Offender Disposition will determine the duration of the extension [Such extension will be determined by the Department of Sentenced Offender Disposition]; or

(C) [(2)] the youth receives a demotion in B phase after the exit interview, in which case the 120-day deadline will [may] be extended up to 30 days to allow the youth to regain phase B4. The Department of Sentenced Offender Disposition will determine the duration of the extension; or [Such extension will be determined by the Department of Sentenced Offender Disposition.]

(D) the youth loses transfer eligibility as set forth in subsection (g) of this section.

(3) Except for youth described in subsection (g)(2) of this section, when the SSC confirms that a youth does not meet program completion criteria, the youth will not be eligible for transfer until such time as the youth meets program completion criteria as set forth in subsection (d) of this section.

(i) [(j)] Transfer Process to TDCJ-PD.

(1) TYC will submit the required documentation requesting a transfer of the offender to TDCJ-PD along with an adjudication form and a case summary, which includes recommendations for parole conditions within 30 days from the final decision authority transfer approval date.

(2) TDCJ will process the information and forward to the Texas Board of Pardons and Paroles, who will set the condition for parole within 90 days of receiving TYC's transfer notification.

(3) On receipt of the conditions from TDCJ, the TYC/TDCJ liaison will contact TDCJ-PD to confirm the transfer date, notify the sending facility of the parole conditions and the transfer date, coordinate the transfer process and make final arrangements for the discharge.

(4) TDCJ personnel will serve their Order of Transfer in person on the scheduled day, at which time the sentenced offender youth is transferred to the TDCJ-PD and discharged from [the] TYC.

(j) [(k)] Notification. TYC will notify the committing juvenile court [judge], the prosecuting attorney, the parole officer and the [county] chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the transfer.

§85.69. Program Completion for Sentenced Offenders Adjudicated for Capital Murder.

(a) Purpose. The purpose of this rule is to establish criteria and the [an] approval process for transferring, upon program completion, sentenced offenders adjudicated for capital murder to the Texas Department of Criminal Justice-Parole Division (TDCJ-PD) or the Texas Department of Criminal Justice - Institutions Division (TDCJ-ID).

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title [(relating to Definitions)].

(2) For specific information regarding Resocialization phase requirements and assessment, see §87.3 of this title.

(3) [(2)] This rule does not apply to:

(A) disciplinary movements. See Chapter 95, Subchapter A of this title for disciplinary consequences [(relating to Disciplinary Practices)].

(B) sentenced offender youth adjudicated for any offense other than capital murder, see §§85.59 and 85.61 of this title. [See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19) and §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older).]

[(c) General Restrictions. Refer to §85.59 of this title for the list of general restrictions.]

(c) [(d)] General Requirements.

(1) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(2) The Special Services Committee (SSC) shall evaluate the youth six (6) months after admission to TYC, when the minimum period of confinement (MPC) is complete, on or about the youth's 20th birthday to determine eligibility for transfer to TDCJ-ID or TDCJ-PD, and at other times as requested by the committee.

(A) The SSC agenda, identifying sentenced offender youth that are being considered for transfer to TDCJ-ID, should be distributed among TYC staff within a reasonable time prior to the scheduled SSC meeting.

(B) All TYC staff and volunteers should be given the opportunity to attend the SSC meeting and speak on the behalf of a youth, if they are inclined to do so.[, and a] A brief summary of their testimony should be included in the SSC minutes.

(C) All TYC staff and volunteers must be informed (given written notice) that they may submit a written statement to be considered by the SSC and the [local] chief local administrator (CLA).

(3) A plan to minimize risk factors for re-offending shall be developed for each youth prior to transferring him/her to TDCJ-PD.

(4) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title for victim notification procedures [(relating to Rights of Victims)].

(5) [All residential programs releasing an undocumented foreign national youth must notify] Immigration and Customs Enforcement (ICE) must be notified when transferring an undocumented foreign national youth to TDCJ-PD. Refer to §85.79 of this title for notification procedures regarding undocumented foreign national youth [(relating to Parole of Undocumented Foreign Nationals) for procedures].

(6) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title for sex offender registration procedures [(relating to Sex Offender Registration)].

(7) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(8) Minimum Period of Confinement (MPC). The MPC is ten (10) years for youth sentenced for capital murder or completion of the sentence, whichever occurs first.

(9) Placement. A sentenced offender [Sentenced offenders] shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless the youth is:

(A) transferred to TDCJ-ID in accordance with legal requirements or committing court approval. See §85.65 of this title for discharge of sentenced offenders upon transfer to TDCJ [(relating to Discharge of Sentenced Offenders Upon Transfer to TDCJ or Completion of Sentence)]; or

(B) a youth whose offense was committed before September 1, 2003, who is approved by the committing court to attain parole status prior to completion of serving the MPC [for youth whose offense committed before September 1, 2003]; or

(C) a youth whose offense was committed on or after September 1, 2003, who is approved by the executive director to attain parole status prior to completion of serving the MPC [for youth whose offense committed on or after September 1, 2003].

(10) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when the youth is transferred to TDCJ (prior to age 21) or his/her sentence is complete (except when committed under concurrent determinate sentence and indeterminate commitment orders. See §85.23 of this title [as specified in subsection (d)(11) of this section]).

[(11) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:]

[(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.]

[(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, and the youth is discharged from the indeterminate commitment order upon completion of the indeterminate offense.]

[(C) The determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently.]

(d) [(e)] Release/Transfer Criteria. [A sentenced offender youth adjudicated for capital murder in a high restriction place-

ment (prior to the completion of the MPC) will be transferred to TDCJ-PD/TDCJ-ID or may be released to TYC parole.]

(1) Youth Whose Offense was Committed Before September 1, 2003.

(A) TYC will request a hearing by the committing juvenile court with a recommendation to transfer to TDCJ-PD[,] if a youth (before 20 years and 6 months of age [20.6]) meets the following criteria:

(i) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(ii) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsection (e) [(f)] of this section; and

(iii) completion of three (3) years toward the MPC; and

(iv) the youth is currently assessed at Resocialization phase A4,B4,C4 with no main objectives or sub-objectives indicators under remediation; and [.]

(v) if the youth was assessed as a Priority 1 need for specialized treatment, the youth has completed specialized treatment (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(B) If the youth does not meet the criteria in subsection (d) [(e)](1)(A)(i) - (v) [(iv)], TYC will request a hearing by the committing juvenile court with a transfer recommendation to either TDCJ-PD or TDCJ-ID when the youth reaches 20 years and 6 months of age [the age of 20.6].

(C) A youth who has not received court approval to transfer to TDCJ-PD will be transferred to TDCJ-ID no later than the youth's 21st birthday.

(2) Youth Whose Offense was Committed On or After September 1, 2003.

(A) Release to TYC Parole (Before Age 19). A youth who was sentenced for capital murder where the offense was committed on or after September 1, 2003, may be released to TYC parole without court approval if the youth meets criteria listed in subsection (d) [(e)](1)(A)(i) -(v) [(iv) and, for youth committed after April 1, 2005, successful completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections)].

(B) Transfer to TDCJ-PD (After Age 19).

(i) A youth who was sentenced for capital murder where the offense was committed on or after September 1, 2003, may be transferred to TDCJ-PD without court approval if the youth meets criteria listed in subsection (d) [(e)] (1)(A)(i) - (v) [(iv) and, for youth committed after April 1, 2005, successful completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections)].

(ii) A youth who was sentenced for capital murder where the offense was committed on or after September 1, 2003, who does not meet transfer criteria listed in subsection (d)[(e)](1)(A)(i) - (v), [(iv) including completion of specialized treatment] will remain in high restriction until age 21. No later than the youth's 21st birthday, he/she will be transferred to TDCJ-PD without court approval.

(3) For Transferring to TDCJ-ID (Before Age 21). TYC may request a court hearing regardless of when the youth's offense was committed and no later than the youth's 21st birthday if the following criteria have been met:

(A) youth is at least age 16; and

(B) youth has spent at least six (6) months in a high restriction facility; and

(C) youth has not completed his/her sentence; and

(D) youth has met at least one of the following behavior criteria:

(i) youth has committed a felony or Class A misdemeanor while assigned to residential placement; or

(ii) youth has committed Category I rule violations [(]on three or more occasions[)]; or

(iii) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(iv) youth has demonstrated an inability to progress in his/her Resocialization program due to persistent non compliance with treatment objectives; and

(E) alternative interventions have been tried without success. (For example: special treatment plans, disciplinary transfer, extended stay); and

(F) youth's conduct indicates that the welfare of the community requires the transfer.

(e) [(f)] Decision Authority.

(1) The executive director (final TYC decision authority) must, before a youth to whom this section apples and whose offense was committed before September 1, 2003, turns 21 years of age:

(A) determine if the youth [, before age 21, whose offense was before September 1, 2003] meets criteria under this rule for release to TYC parole or transfer to TDCJ-PD; or

(B) determine if the youth[, before age 21,] meets criteria under this rule for transfer to TDCJ-ID; and

(C) approve the request for a hearing by the committing juvenile court to release the youth to TC parole or TDCJ-PD/TDCJ-ID.

(2) For a youth whose offense was committed before September 1, 2003, the[The] committing juvenile court is the final decision authority for releasing the youth to TYC parole or transferring him/her to TDCJ-PD [for youth whose offense was before September 1, 2003].

(3) If the youth's offense was committed before September 1, 2003, upon receipt of the order of the committing juvenile court, the youth will be transferred to TDCJ-ID [upon receipt of the committing juvenile court order] no later than the youth's 21st birthday. Court approval is required.

(4) The final TYC decision authority does not have to request a hearing for a youth whose offense was committed on or after September 1, 2003, in order for him/her to be released to TYC parole or transferred to TDCJ-PD.

(f) [(g)] Transfer Process.

(1) Transferring to TDCJ-PD.

(A) TYC will submit the required documentation requesting a transfer of the offender to TDCJ-PD along with an adjudication form and a case summary, which includes recommendations for parole conditions.

(B) TDCJ will process the information and forward it to the Texas Board of Pardons and Paroles, who will set the conditions for parole or transfer within 90 days of receiving TYC's transfer notification.

(C) On receipt of the conditions, the TYC/TDCJ liaison will contact TDCJ-PD to confirm the transfer date, notify the sending facility of the parole conditions and the transfer date, coordinate the transfer process, and make final arrangements for the discharge.

(D) TDCJ personnel will serve their Order of Transfer in person on the scheduled day, at which time the sentenced offender youth is transferred to the TDCJ-PD and discharged from [~~the~~] TYC.

(2) Transferring to TDCJ-ID.

(A) Following the committing court's decision to transfer a sentenced offender to TDCJ-ID, the youth is returned to the assigned program location and then transported to TDCJ-ID.

(B) The youth will be transported to the diagnostic unit at TDCJ in Huntsville, Texas. The TYC court liaison in Central Office will provide the address or location to the diagnostic unit, if needed.

(C) Upon transfer to TDCJ-ID, the youth may only bring the following personal property items to TDCJ-ID:

(i) Bible/Other Religion Text - some offenders write addresses and telephone numbers in it since they cannot take separate paper into TDCJ-ID;

(ii) Trust fund--offender must use TDCJ personal property envelopes. Use the TDCJ Inmate Trust Fund form, ITF-16 (available through TDCJ) when sending offender's trust fund after the offender has already been transported to TDCJ-ID. The guards at the Diagnostic Unit can provide the Inmate Trust Fund form, ITF-16, if needed.

(g) [~~(h)~~] Notification. TYC will notify the committing juvenile court [~~judge~~], the prosecuting attorney, the parole officer, and the [~~county~~] chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the discharge.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

TRD-200604390
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 424-6014

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CHAPTER 87. TREATMENT SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.55

The Texas Youth Commission (the commission) proposes new §87.55, concerning waivers from certain Specialized Treatment Programs. The new section will establish criteria for waiving the requirement for youth with the highest need for specialized treatment to complete their required Specialized Treatment Program. Waivers may be granted when agency resources prevent a youth from completing treatment during his assigned length of stay; when a youth is unable to complete treatment due to medical, mental health, or mental retardation issues; or for other reasons deemed appropriate.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be efficient use of the agency's resources and timely release to parole for eligible youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.075 and §61.034, which provide the commission with the authority to confine a youth under conditions it believes are best designed for the youth's welfare and make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§87.55. Waivers from Certain Specialized Treatment Programs.

(a) Purpose. The purpose for this rule is to establish criteria for waiving the requirement for Priority 1 youth to complete certain Specialized Treatment Program(s).

(b) Applicability. This rule only applies to youth who are assigned to the Chemical Dependency Treatment Program, the Capital and Serious Violent Offender Treatment Program, and the Sexual Behavior Treatment Program.

(c) Criteria for Granting Waivers.

(1) The requirement for eligible Priority 1 youth to complete specialized treatment may be waived when, due to staff vacancies, program closures, or insufficient agency resources, participation in the program will extend the youth's length of stay.

(2) The requirement for eligible Priority 1 youth to complete specialized treatment may be waived if the youth is unable to participate in specialized treatment due to a medical, mental health, or mental retardation condition.

(d) Special Waivers for Youth Committed On or Before April 1, 2005. A youth who was committed on or before April 1, 2005 who, on November 1, 2006, does not have sufficient time left on his/her length of stay to complete his/her assigned specialized treatment program shall be granted a waiver. The time requirements for such specialized treatment programs are as follows:

(1) six (6) months for Chemical Dependency Treatment Program;

(2) nine (9) months for Capital and Serious Violent Offender Treatment Program;

(3) 12 months for Sexual Behavior Treatment Program.

(e) Decision Authority for Waivers.

(1) The facility administrator forwards the request for a waiver of specialized treatment completion to the assistant deputy executive director of juvenile corrections and the assistant deputy executive director of rehabilitation services to determine if waiver criteria have been met. When a determination has been made that the youth meets the criteria for the waiver, the waiver shall be granted.

(2) The assistant deputy executive director for juvenile corrections and the assistant deputy executive director for rehabilitation services may grant a youth a waiver from specialized treatment for any reason they deem appropriate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

TRD-200604391
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 424-6014

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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

The Texas Youth Commission (the commission) proposes the repeal of §97.23, concerning Physical Restraint and simultaneously proposes new §97.23, concerning Use of Force.

The new §97.23 will provide greater consistency and clarity as to when physical restraint is to be used and what steps should be taken to prevent the need for it. Force is used only for purposes of restraining youth from harmful or dangerous conduct and only then as a last resort. The new section also provides guidance as to when force should and should not be used.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the safety and protection of youth and staff from harmful or dangerous conduct. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

37 TAC §97.23

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of the section is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its function.

The proposed repeal affects the Human Resources Code, §61.034.

§97.23. Physical Restraint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 424-6014

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37 TAC §97.23

The new section is proposed under the Human Resources Code, §61.075, which provides the commission with the authority to confine a youth under conditions it believes are best designed for the youth's welfare.

The proposed section affects the Human Resources Code, §61.034.

§97.23. Use of Force.

(a) Purpose. The Texas Youth Commission (TYC) permits its employees to use the appropriate degree of force when reasonably necessary to protect persons and property, overcome unlawful resistance and maintain safety and order. Crisis de-escalation and behavior management techniques are expected to be used to the greatest extent possible to ensure force is the last resort. When physical restraint becomes necessary, it is the policy of TYC to use restraint techniques that minimize the risk of harm to the youth and staff. Force is to be used as a last resort when other less restrictive interventions have failed or are not practicable under the circumstances existing at the time. The degree of force used is predicated on the totality of the circumstances including the amount of resistance presented by the youth. Under no circumstances shall the force used be greater than necessary to achieve control of the youth and maintain safety and order. It is the policy of the TYC not to use force against a youth except for the limited circumstances described in this rule.

(b) The use of force as punishment or for convenience of staff is strictly prohibited.

(c) Agency staff shall use only the least amount and type of reasonable force necessary to control and overcome unlawful resistance, protect persons, protect property and maintain order and safety.

(d) Any other staff shall intervene, if a reasonable opportunity exists, when they know or should know that another staff is using force that is unjustified and/or excessive. Staff shall report any violations of this policy before the end of their shift.

(e) Any youth suffering an injury following a restraint shall be seen by the medical staff for medical treatment and to determine the extent of any injuries. All injuries shall be documented in the medical record along with an explanation from the youth describing how the injuries occurred. Photographs shall be taken of all injuries.

(f) Applicability.

(1) For riot control procedures, see §97.27 of this title.

(2) To allow youth time to regain self-control, see §97.35 of this title relating to temporary segregation of youth out of control and §97.39 of this title relating to isolation.

(3) For short-term placement of out-of-control youth in a security program, see §97.40 of this title.

(4) For criteria and procedures on administering a psychotropic drug in a medication-related emergency when a youth will not give consent for the administration, see §91.92 of this title.

(5) For limitation on youth searches, see §97.7 of this title.

(g) Explanation of Terms Used.

(1) Disruption of Program--youth's behavior requires intervention to the extent necessary to stop its interruption of the current program.

(2) Handle With Care--an agency-trained physical intervention system based on a passive manual restraint method that provides control without inflicting pain or injury.

(3) Imminent Harm or Imminent Threat--a reasonable belief that harm to persons or property is about to occur, and the need for action is immediate.

(4) Positional Asphyxia--the reduction in oxygen in the bloodstream and tissues due to an impairment of a person's respiratory system caused by body positioning or the application of external weight/pressure.

(5) Practicable--means something is capable of being done with the means at hand and presenting circumstances.

(6) Reasonable Belief--for purposes of this policy, means facts and circumstances, known to staff at the time of the incident, that would cause a reasonable, trained staff to conclude that an imminent threat exists.

(7) Reasonable Force--the degree of force which a reasonable, trained juvenile corrections staff, in like circumstances, would judge to be reasonably necessary to control and overcome unlawful resistance, protect self, protect third parties, protect youth from self-harm, protect property, compel movement and maintain order and safety.

(8) Threat Assessment--weighing whether the youth has the opportunity, ability and risk to do harm to self, others, or property or the behavior reflects only emotional venting or verbal aggression with no physical movement toward a target.

(9) Totality of the Circumstances--means there is no single deciding factor. One should consider all the facts, surrounding circumstances, conditions and conclude from the whole picture the type and degree of force required.

(h) Types of Interventions and Force.

(1) Non-Verbal and Verbal Interventions.

(A) Physical presence--this includes mere presence of staff to include non-verbal gestures made with eyes, hands, head or body utilizing proximity, standing, eye contact and/or facial expressions.

(B) Verbal Persuasion--this includes verbal prompting, directive statements, redirection, coaching using behavior management skills to include verbal judo.

(C) Staff Teamwork--involving staff who may not have been directly involved in the situation initially to intervene with the youth.

(D) Use of Huddle-ups or problem-solving groups.

(2) Physical Intervention. Use of Force--any physical contact exerted upon a youth to direct, compel or restrain bodily movement; includes physical escort, physical restraint, and the use of chemical agents.

(A) Physical Escort--means touching of the arm, elbow, shoulder or back for the purpose of directing the youth from one location to another.

(B) Physical Restraint--means restricting a youth's freedom of action by using various restraint methods, including manual restraint, mechanical restraint, and full-body restraint. The term does not include the limited physical contact that may take place for the purpose of physically escorting a youth to a different location as defined above.

(i) Manual Restraint--means use of hands-on techniques as a means of physical restraint.

(ii) Mechanical Restraint--means use of a mechanical device applied to a youth as a means of physical restraint.

(iii) Full-Body Restraint--means use of a padded cloth or leather mechanical restraint device to secure a youth to a specially designed bed as a means of physical restraint.

(C) OC Spray--also known as pepper spray, means the chemical agent Oleoresin Capsicum (OC).

(i) Situations Authorizing Use of Force. Use of force is authorized under the following circumstances:

(1) Protection of youth from imminent self-harm;

(2) Protection of self from imminent harm;

(3) Protection of other youth or third parties from imminent harm;

(4) Protection of property from imminent damage;

(5) Prevention of escape or fleeing apprehension;

(6) Movement of a youth referred to the security unit, isolation room or alternative classroom;

(7) Movement of a resistant youth within the security unit to minimize the disruption when the youth's behavior is substantially disruptive and the youth refuses to follow a reasonable request to stop the behavior;

(8) Movement of a resistant youth from a dangerous or disruptive situation;

(9) To conduct a search of a resistant youth reasonably believed to be in possession of a weapon, an item that can be adapted for use as a weapon, a controlled substance, or other item(s) that breech the security of the facility;

(10) To conduct a search of a resistant youth entering the security unit;

(11) Administration of medical treatment to a resistant youth when, under the circumstances, failure to administer the treatment could have serious health implications as determined by a health care professional; or

(12) Collection of DNA samples from a resistant youth, as required by law.

(j) Factors to Consider in Determining the Intervention or the Degree of Force to be Used.

(1) When encountering one of the above situations in subsection (i) of this section, use of force may or may not be necessary. In determining the type of intervention or the degree of force to be used, staff must determine the situation by means of a "threat assessment." Sometimes that assessment must be made in a split second in order to prevent the youth from causing serious harm. A threat assessment involves weighing the youth's opportunity, ability and risk to do harm to self, others or property; as opposed to the youth's behavior reflecting only emotional venting or verbal aggression with no physical movement toward a target. When the threat is imminent and the risk of harm is high, the use of force is appropriate and may be required. The following factors should be considered in making an assessment:

(A) Opportunity--whether the youth has a reasonable opportunity to carry out the threat; and

(B) Ability--whether the youth presents a threat to safety and security and has a reasonable ability to carry out the threat; and

(C) Risk--how serious is the risk of harm to self, others or damage to property if force is or is not used.

(2) A youth must be released from physical restraint as soon as the purpose for which the youth was restrained under subsection (i) of this section has been achieved.

(k) Approved Techniques for Use of Force. Techniques that may be used for use of force are limited to:

(1) agency-trained:

(A) Handle With Care methods of manual restraint;

(B) Mechanical restraints;

(C) OC spray, under certain limited circumstances;

(D) Physical escort; and

(E) Full-body restraints, under certain limited circumstances; and

(2) other non-prohibited methods of manual restraint that under the totality of circumstances existing at the time:

(A) are more practical than the agency-trained Handle With Care methods of restraint, taking into account the youth's and staff's particular vulnerability to harm;

(B) involve a use of force that is measured and progressive to a degree no greater than that reasonably necessary to achieve the objective; and

(C) do not unduly risk serious harm or needless pain to the youth or staff.

(l) Prohibited Techniques of Physical Restraint.

(1) Prohibited techniques of physical restraint that unduly risk serious harm or needless pain to the youth includes the intentional, knowing, or reckless use of any of the following techniques:

(A) restricting respiration in any way, such as applying a chokehold or pressure to a youth's back or chest or placing a youth in a position that is capable of causing positional asphyxia;

(B) using any method that is capable of causing loss of consciousness or harm to the neck;

(C) pinning down with knees to torso, head and/or neck;

(D) slapping, punching, kicking, or hitting;

(E) using pressure point, pain compliance and joint manipulation techniques, other than an approved Handle With Care method for release of a chokehold, bite or hair pull;

(F) modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(G) dragging or lifting of the youth by the hair or ear or by any type of mechanical restraints;

(H) using other youth or untrained staff to assist with the restraint;

(I) securing a youth to another youth or to a fixed object, other than to an agency-approved full-body restraint device; or

(J) administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the youth's behavior is attributable to mental illness and the drug is authorized by a licensed physician and administered by a licensed medical professional.

(2) A physical contact that would otherwise be prohibited, under the above paragraph, does not include one that is only accidental and momentary.

(m) Requirements for Planned Manual Restraint Situations. Planned manual restraint is when a youth is confined alone in a locked room and time is available to plan for manual restraint in the event preventive steps prove unsuccessful. Planned manual restraint is authorized only when the requirements of subsection (i) of this section have been met.

(1) Prior to approval of planned manual restraint, the facility administrator or administrative duty officer (ADO) must personally observe the situation.

(2) All planned manual restraints must be videotaped, including a recording of a verbal description of the youth's conduct and all warnings provided the youth.

(3) Only staff trained in planned manual restraint may participate in the team that is assembled for the room entry.

(4) The youth must be warned to discontinue the misconduct at least two times after the team is assembled and before the room entry.

(n) Requirements for Use of Manual Restraint to Remove Clothing from Suicidal Youth.

(1) A mental health professional (MHP), as defined in §91.88 of this title, shall determine if physical restraint is necessary in order to remove clothing from a youth who displays suicidal ideation or behavior.

(2) Approval by the facility administrator or designee is required for the restraint. The facility administrator or designee must personally observe the situation.

(3) Manual restraint may only be used after alternative interventions have been attempted to remove clothing that could potentially be used for imminent self-injury. During manual restraint, staff shall provide continuous verbal encouragement to comply. Should the youth, at any time, comply with staff requests to remove clothing, the manual restraint is terminated.

(4) Clothing will be removed in the security unit, in a private location.

(5) Staff must ensure that at least one staff conducting the restraint is the same gender as the youth.

(6) Once the clothing has been removed, the restraint is terminated and protective clothing is issued.

(o) Approved Mechanical Restraints and Guidelines for Use.

(1) Approved Mechanical Restraint Equipment. The following devices, when used only in a manner consistent with their intended purpose and when the requirements of subsection (i) of this section are met, are agency-approved mechanical restraint equipment:

(A) Handcuffs (Hard)--metal (not plastic) devices fastened around the wrist to restrain free movement of the hands and arms.

(B) Wristlets (Soft)--a cloth or leather band fastened around the wrist or arm and which may be secured to a waist belt.

(C) Plastic Flex Cuffs--plastic devices fastened around the wrist to restrain free movement of the hands and arms and used only in riot control.

(D) Anklets (Soft)--a cloth or leather band fastened around the ankle or leg.

(E) Leg Irons (Hard)--a metal device with a length of chain fastened around the ankle to limit movement of the legs. Handcuffs may not be used to cuff the ankles. Oversized leg irons may be used if the standard leg irons do not go around the cuff of the ankle.

(F) Transportation Belt/Chain, Waist Band, and/or Belly Chain--these devices can be cloth, leather, or metal links that are fastened around the waist. The transportation belt is used to secure the arms to the sides or front of the body.

(G) Transport Box--a small metal box that may be used to secure handcuffs while using a transportation chain.

(H) Padlocks or Key Locks--these locks are used to secure handcuffs, wristlets, anklets, and ankle cuffs.

(I) Mittens--a cloth, plastic, foam rubber, or leather hand covering fastened around the wrist or lower arm. Acceptable fasteners include elastic, Velcro, ties, paper tape, and pull strings.

(J) Helmets--a plastic, foam rubber, or leather head covering. If appropriate, a face guard may be attached to the helmet. The device must be proper size for the youth, and the chin strap should not be so tight as to interfere with circulation.

(K) Spit Mask--a cloth, paper, or nylon covering that is designed to prevent spitting and discourage biting.

(L) Transport Leg Brace--a metal and nylon device that allows a person to walk, but will impede running or kicking. This device can be worn out of sight under trousers.

(2) Guidelines for Use.

(A) Mechanical restraint equipment must be applied properly. A device must not be secured so tightly as to interfere with circulation or so loosely as to permit chafing of the skin.

(B) When mechanical restraints are employed, for reasons other than transporting a youth, the youth is placed on his/her side as soon as possible in order to help ensure adequate respiration and circulation.

(C) A mechanical restraint, for other than transportation or riot control, shall be terminated as soon as the purpose for which the youth was restrained under subsection (i) of this section has been achieved, but in any event within 15 minutes, unless an extension is granted. Extensions may be granted by the facility administrator or designee for additional 30-minute intervals, until termination of restraint.

(D) When mechanical restraints are employed, staff shall ensure the youth's safety by checking the youth for adequate respiration and circulation every 15 minutes until termination of restraint. Staff will provide continuous visual supervision and appropriate assistance until the mechanical restraint is terminated.

(E) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth to a security unit and when transporting youth currently admitted to the security unit to activities outside the unit in order to prevent harm to the youth or others. These restraints may not be attached in a manner that prevents the youth from being able to stand upright. Mechanical restraints may remain on the youth during the duration of the activity, if circumstances warrant such restraints.

(F) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting youth currently admitted to the security unit to activities within the security unit in order to prevent harm to the youth or others. These restraints may not be attached in a manner that prevents the youth from being able to stand upright. Mechanical restraints may remain on the youth during the duration of the activity, if circumstances warrant such restraints.

(3) Mechanical Restraint Use by the Transportation Unit. Mechanical ankle and wrist restraints attached to a waist belt by a lead chain shall be used during transportation by the transportation unit. Exceptions may be made for youth being transported following release on parole from a residential program.

(4) Mechanical Restraint Use by Other Transporters.

(A) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain shall be used during transportation when a youth is being transported to a high restriction program.

(B) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth off-campus.

(p) Approved Use of OC Spray and Guidelines for Use.

(1) Approved Use of OC Spray.

(A) OC Spray is the only agency-approved chemical agent. It is authorized for use only when other less restrictive interventions have failed or are determined to be impracticable, and it is necessary to:

(i) quell a riot or major campus disruption;

(ii) resolve a hostage situation;

(iii) remove youth from behind a barricade;

(iv) secure an object that is being used as a weapon and that is capable of causing serious bodily injury;

(v) protect oneself from imminent harm when manual restraint would be impracticable;

(vi) protect youth, staff or others from imminent harm when manual restraint would be impracticable;

(vii) prevention of escape and fleeing apprehension when manual restraint would be impracticable.

(B) Unless it is necessary to prevent loss of life or serious bodily injury, OC spray is not authorized for use when:

(i) the youth has been identified as having respiratory problems or other health conditions which would make use of OC spray dangerous; or

(ii) the youth is assigned to a mental health treatment program or identified by a mental health professional as having a psychiatric condition or mental health diagnosis that would contraindicate the use of OC spray until the MHP has been given the opportunity to establish control; or

(iii) the youth is confined in a room in a security unit or an isolation room.

(2) Persons Authorized to Use OC Spray.

(A) OC spray is permitted only in TYC high restriction institutions and in high restriction contract care programs approved by the executive director or designee.

(B) Only staff who have been trained by TYC in the use of OC spray are authorized to use it.

(C) In TYC high restriction institutions, only the facility administrator, assistant superintendent, ADO, duty supervisor, director of security and security personnel whose regular assignment is outside the security unit are authorized to routinely carry OC spray on their person.

(3) Guidelines for Use.

(A) OC spray canisters must be carefully controlled at all times. Except for canisters in the possession of the facility administrators and assistant superintendents, access to canisters must be controlled at a single central location.

(B) After administration of OC spray, staff must initiate de-contamination with cool water as soon as the purpose of the restraint has been achieved.

(C) Immediately following de-contamination from OC spray, medical staff will be contacted to examine and, if necessary, treat youth and staff.

(q) Approved Use of Full-Body Restraint and Guidelines for Use.

(1) Approved Use of Full-Body Restraint. A full-body restraint bed equipped with cloth or leather mechanical restraint straps/devices to secure a person on a bed, face upward, is the only agency-approved full-body restraint equipment. It must be used only in a manner consistent with its intended purpose. It is authorized for use only when:

(A) the requirements of subsection (i) of this section have been met; and

(B) the restraint is necessary to prevent serious self-injury.

(2) Persons Authorized to Use Full-Body Restraint.

(A) Full-body mechanical restraints are permitted only in TYC institutions and in high restriction contract care programs approved by the executive director or designee.

(B) Staff who may be expected to participate in application of the restraints or monitoring, managing, or approving of the restraint must receive special training and will not participate in its implementation until the training has been received. The training will include proper use and application of full body restraint devices and applicable TYC policies and guidelines regarding the implementation, documentation, and continuation of full body restraint.

(C) At least one staff trained specifically in full body restraint techniques must be involved in any takedown procedure. If at least one trained staff is not available to supervise, full-body restraint shall not be employed.

(3) Guidelines for Use.

(A) If the facility resources are not sufficient to support the procedural requirements for full body restraint as specified in this subsection, then full body restraint of the youth must not be employed.

(B) Authorization by the facility administrator or assistant superintendent to use full body restraint is required and is valid for up to one hour only.

(C) Prior to the expiration of the first hour, the youth shall be evaluated face-to-face by a MHP who may recommend approval to continue the full body restraint.

(D) In order to recommend continuation of the restraint, the mental health assessment will verify that the current use of full body restraint is not having a psychologically damaging effect and that the need for full body restraint is not due to an immediate psychiatric crisis which requires alternative interventions.

(E) Approval from a physician or a licensed doctoral psychologist must be obtained to continue the full body restraint beyond one (1) hour. If a determination is made that the behavior is due to a mental health problem, the youth shall be provided appropriate mental health services including referral to the CSU or state hospital if she or he meets the admission criteria pursuant to §87.67 of this title.

(F) Additional MHP assessment is required to extend the restraint beyond four (4) hours and at least every four (4) hours thereafter if the restraint continues.

(G) The facility administrator or assistant superintendent may direct additional MHP assessment at any time.

(H) Restraint shall be terminated as soon as the youth's behavior indicates the threat of imminent self-injury is absent.

(I) Staff employing a full body restraint shall ensure the youth's personal dignity by providing a protected environment and as much privacy as possible.

(J) All items or articles (i.e. belts, gloves, and jewelry) with which a youth might injure himself/herself shall be removed prior to application of restraint devices. However, youth shall be permitted to wear as much clothing as is safe.

(K) Youth placed in full body restraint shall be provided:

(i) regular checks, performed by a nurse, of the physical condition of the youth and the placement of the restraints within the first 30 minutes and every hour during the restraint;

(ii) an assessment of circulation, position, and open airway checks at least every 15 minutes by specifically trained staff;

(iii) opportunity for motion and exercise for a period of not less than five (5) minutes at each half hour;

(iv) regularly scheduled meals and drinks served on appropriate food ware for safety;

(v) regularly prescribed medications, unless otherwise ordered by a physician;

(vi) opportunities for elimination of bodily waste are offered at least every two (2) hours;

(vii) a room of adequate size, free of safety hazards, adequately ventilated during warm weather, adequately heated during cold weather, and appropriately lighted; and

(viii) continuous visual supervision by staff.

(L) No order or approval for full body restraint may be in force for longer than 12 hours. If such restraint is still required for the youth's safety, a physician must directly observe the youth and provide written orders.

(M) Use of medications to assist in calming an agitated youth at the time of restraint or as a substitute for restraint may be appropriate and/or the preferred method of treatment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2006.

TRD-200604393
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 1, 2006
For further information, please call: (512) 424-6014

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board withdraws the proposed amendments to §273.4 which appeared in the June 2, 2006 issue of the *Texas Register* (31 TexReg 4560).

Filed with the Office of the Secretary of State on August 21, 2006.

TRD-200604375
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: August 21, 2006
For further information, please call: (512) 305-8502

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts, with no changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4301), the following amendments:

§26.223, relating to - Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates;

§26.224, relating to - Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies;

§26.225, relating to - Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies;

§26.401, relating to - Texas Universal Service Fund (TUSF);

§26.404, relating to - Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan;

§26.406, relating to - Implementation of the Public Utility Regulatory Act §56.025;

§26.408, relating to - Additional Financial Assistance (AFA); and

§26.423, relating to - High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service.

These adopted amendments make minor non-policy-affecting changes to Chapter 26 Substantive Rules to bring them into conformity with associated minor changes in the Public Utility Regulatory Act (PURA) brought about by Senate Bill 5, 79th Legislature, Second Called Session. Project Number 32136 is assigned to this proceeding.

The commission received no comments on the proposed amendments.

SUBCHAPTER J. COSTS, RATES AND TARIFFS

16 TAC §§26.223 - 26.225

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §§52.155(a) and (c), 56.021, 56.025(a), 56.026(e), 58.051, 58.151, and Chapter 65, which provide the authority for the various rule changes made herein.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 52.155(a) and (c), 56.021, 56.025(a), 56.026(e), 58.051, 58.151, and Chapter 65.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604299
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 4, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 936-7223

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SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.401, 26.404, 26.406, 26.408, 26.423

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §§52.155(a) and (c), 56.021, 56.025(a), 56.026(e), 58.051, 58.151, and Chapter 65, which provide the authority for the various rule changes made herein.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 52.155(a) and (c), 56.021, 56.025(a), 56.026(e), 58.051, 58.151, and Chapter 65.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604301

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 4, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.51

The Texas Board of Professional Engineers adopts an amendment to §137.51, relating to General Practice, without changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4999) and will not be republished.

The adopted rule change removes an unnecessary word at the end of the rule.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604287
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 4, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 440-7723

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22 TAC §137.57

The Texas Board of Professional Engineers adopts an amendment to §137.57, relating to Engineers Shall be Objective and Truthful, without changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4999) and will not be republished.

The adopted rule change adds clarification to the specific and individual violations as it relates to fraudulent, deceitful or misleading.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604288
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 4, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 440-7723

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22 TAC §137.59

The Texas Board of Professional Engineers adopts an amendment to §137.59, relating to Engineers' Actions Shall Be Competent, without changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5000) and will not be republished.

The adopted rule change adds clarification by removing the reference to careful and diligent manner and conformance parameters from this rule, which is related to competence.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604289
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 4, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 440-7723

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22 TAC §137.63

The Texas Board of Professional Engineers adopts an amendment to §137.63, relating to Engineers' Responsibility to the Profession, with changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5001)

and will be republished. Section 137.63(c)(6) is adopted with a minor grammatical change. The sentence ends with a semicolon which is being changed to a period.

The adopted rule change adds reference to "standards" to the list of applicable professional practice requirements in (b)(1) of the rule and adds a new (b)(6), which addresses practicing in a careful and diligent manner.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604290
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 4, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 440-7723

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CHAPTER 139. ENFORCEMENT
SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers adopts an amendment to §139.35, relating to Sanctions and Penalties, without changes to the proposed text as published in the July 7, 2006, issue of the *Texas Register* (31 TexReg 5434) and will not be republished.

The adopted rule change updates citations in the Sanction and Penalty table in relation to proposed changes to §137.57, concerning misleading practice; and §137.63, concerning the exercise of care and diligence in the practice of engineering.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604291
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 4, 2006
Proposal publication date: July 7, 2006
For further information, please call: (512) 440-7723

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PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.4

The Polygraph Examiners Board adopts an amendment to §391.4, concerning State Examinations for Polygraph Examiners License, without changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5009) and will not be republished.

Section 391.4(1) and (8) are amended for general grammatical clean-up and so that the Board may be better prepared with scheduling.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2006.

TRD-200604373
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Effective date: September 7, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 424-2058

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PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 593. LICENSES

22 TAC §593.2

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.2, concerning License Application, without changes to the proposed text as published in the July 21, 2006, issue of the *Texas Register* (31 TexReg 5745).

Justification for the amendment is that the rule change will allow the Board to consider any enforcement actions taken against

an individual prior to issuing a license while this individual was licensed by another state, Indian tribe or federal agency.

The amendment will function by allowing the Board to consider other states enforcement measures when an applicant who has received enforcement action from another state applies for a license in Texas.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2006.

TRD-200604381
Murray Walton
Executive Director
Texas Structural Pest Control Board
Effective date: September 10, 2006
Proposal publication date: July 21, 2006
For further information, please call: (512) 305-8270

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22 TAC §593.21

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.21 concerning Technician License Requirements without changes to the proposed text as published in the July 21, 2006, issue of the *Texas Register* (31 TexReg 5746).

Justification for the amendment is that the rule change places the annual training requirement from an original certification cycle to a calendar year cycle. No training will be required during the first calendar year in which a person becomes licensed as a technician.

The amendment will function by allowing the Board to place licensees on a calendar schedule, not a certification schedule. This will result in fewer training and renewal problems for licensees.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §593.23

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.23, concerning Continuing Education Requirements for Certified Applicators, without changes to the proposed text as published in the July 21, 2006, issue of the *Texas Register* (31 TexReg 5746).

Justification for the amendment is that the change will place the annual training requirement on an original certification cycle to a calendar year cycle. No training will be required during the first calendar year in which a person becomes licensed as a certified applicator.

The amendment will function by allowing the Board to place licensees on a calendar schedule, not a certification schedule. This will result in fewer training and renewal problems for licensees.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 595. COMPLIANCE AND ENFORCEMENT

22 TAC §595.4

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §595.4 concerning Pest Control Use Records without changes to the proposed text as published in the July 21, 2006, issue of the *Texas Register* (31 TexReg 5747).

Justification for the rule is simplification and offering licensees a choice between recording product names or EPA registration numbers and alternative methods for reporting mixtures.

The rule will function by allowing licensees to have an easier time indicating the products used in an application. This will reduce the amount of paperwork to generated by licensees and the general public will still be informed.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §595.6

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §595.6 concerning Pest Control Sign without changes to the proposed text as published in the July 21, 2006, issue of the *Texas Register* (31 TexReg 5748).

Justification for the rule is to incorporate the name change for National Pesticide Information Center and updates the names for state agencies.

The rule will function by having paperwork reflect the correct name for matters relating to pesticide poisoning will be reflected in Board documents.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Murray Walton
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22 TAC §595.14

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §595.14 concerning Reduced Impact Pest Control Service without changes to the proposed text as published in the July 21, 2006, issue of the *Texas Register* (31 TexReg 5749).

Justification for the rule is to incorporate the name change for National Pesticide Information Center and updates the names for state agencies.

The rule will function by having paperwork reflect the correct name for matters relating to pesticide poisoning in Board documents.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-8270

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 141. DISPUTE RESOLUTION--BENEFIT REVIEW CONFERENCE

28 TAC §§141.5 - 141.7

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts amendments to §§141.5 - 141.7 concerning requesting and issuing interlocutory orders. Sections 141.5 - 141.7 are adopted with changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 967).

The amendments are necessary to implement House Bill (HB) 7 amendments to Labor Code §410.032 and §410.033, which establish requirements for requesting and issuing interlocutory orders (IOs) for the payment of benefits pending final resolution of a dispute. HB 7 amended Labor Code §410.032 to prohibit a Benefit Review Officer (BRO) who presides over a dispute from issuing an interlocutory order in that dispute. HB 7 amended Labor Code §410.033 to authorize the Commissioner to issue an IO directing each insurance carrier to pay a proportionate share of benefits in disputes involving two or more insurance carriers over the liability for the injured employee's compensable or work-related injuries. The amendments provide a process for requesting an IO that does not allow the BRO that presides over a dispute to issue an IO in the dispute. The process specifies time limits for requesting and responding to a request for IO and a time period for the Division to issue a decision on the request. The amendments allow an insurance carrier to request an IO only for the purpose of ordering multiple carriers to share in the payment of benefits pending a final decision regarding liability. The Division has made changes to the rules as proposed as a result of public comment which are more fully described in the following sections of this preamble.

Amended §141.5 deletes subsection (f), removing the ability of the BRO that presided or will preside at a Benefit Review Conference (BRC) to issue an IO in that same case during or at the conclusion of a BRC. Amended §141.6 establishes the method

and timeframes for requesting IOs. Within 10 days after a BRC in which the dispute is scheduled for a Contested Case Hearing (CCH), a person seeking benefits may send a request for an IO, using a Division form, to the Division's central office in Austin. The requester will also be required to send a copy of the request to the individual that represented the insurance carrier at the BRC. The insurance carrier is allowed five days to respond to the request. If no response is received within five days, the Division will contact the carrier's representative who was at the BRC to request a response to the request for IO. Division staff designated by the Commissioner will consider the request, along with any response by the insurance carrier, and either deny the request or issue an IO. The amended section also gives the designated Division staff the option of conducting a teleconference with the parties prior to acting on a request. Amended §141.7 removes the reference to a BRO sending an IO to Austin as part of the BRO's report. Changes to the rules as proposed include clerical and grammatical corrections, clarification that an insurance carrier can request an IO only for the purpose of ordering multiple carriers to share in the payment of benefits pending a final decision regarding liability, and adding a time limit of 5 days for copies of an IO to be sent to the parties after a teleconference.

Cost Note: A commenter contends there is no justification in the cost note to substantiate that the number of Interlocutory Order (IO) requests will be reduced and provide a cost savings for injured employees.

Agency Response: Historically, most IOs were issued by BROs when resetting a second BRC. HB 7 no longer allows the BRO to issue an IO at the conclusion of a BRC and allows only one BRC in most disputes which results in an expedited process since there will not be multiple BRCs. The fact that the process has been expedited and centralized will result in efficiencies in the workers' compensation system which ultimately results in savings for all participants in the system, including injured employees.

General: A few commenters discussed the BRC process generally regarding injured employee education, the availability of certified interpreters, decorum during BRCs, injured employee and subclaimant participation in BRCs, and making a record of BRCs. A commenter suggested language to add requirements for specific actions in the BRC process.

Agency Response: The Division declines to add requirements to the BRC process. Because BRCs are informal mediation forums, the Division believes that §141.5 should provide general guidance to BROs in mediating disputes rather than prescribing specific actions for every BRC. Section 140.2 requires the Division to provide special accommodations for non-English speaking participants. Additional detail in the description of the BRC process is not necessary.

Comment: A commenter stated that the proposed rule contradicts statements in the preamble that the rule "expedites the process to alleviate financial hardships."

Agency Response: The rule provides that a request for an IO will be acted on within 10 days of receiving the request. This provides a maximum time frame for action. In the last six months the Division has acted on requests for IOs in an average of 9.1 days.

Section 141.5(a): A commenter suggests that the words "participants include" be changed to "participants may include" and that subclaimant should be included.

Agency Response: The Division does not believe that it is necessary to add the word "may" because any person listed will be allowed to participate if attending a BRC.

Section 141.6: A commenter asked whether the term "day" means "working day" or "calendar day."

Agency Response: The Division directs the commenter to §102.3(b) which provides that the use of the term "day" refers to a "calendar day" rather than a "working day."

Section 141.6(a): A commenter questioned whether a request for an IO can be filed at a BRC.

Agency Response: A requesting party may file a request for an IO as soon as a BRC is concluded and a CCH has been scheduled. If the request is filed at a field office, it will be forwarded to the Central Office in Austin for processing.

Comment: Several commenters suggested that carriers and employers should be allowed to request an IO.

Agency Response: The Division agrees that insurance carriers need to be able to request an IO under Labor Code §410.033 to get an order for another carrier to share in the payment of benefits when there is a question as to which carrier is liable and this has been added to §141.6(a). Labor Code §410.033 provides the only situation when a carrier or employer would need to request an IO and that is not suspension (or non-payment) of benefits.

Comment: One commenter believes there is no authority for a subclaimant to request an IO, particularly a health care provider.

Agency Response: Labor Code §409.009 provides that a person may file a written claim with the Division as a subclaimant if the person has: (1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and (2) sought and been refused reimbursement from the insurance carrier. Based on this provision, the Division believes that providing health care treatment equates to providing compensation; therefore, a health care provider is entitled to be a subclaimant and as a party to a claim, a subclaimant is not prohibited from requesting an IO.

Comment: Several commenters suggested that 10 "working days" should be allowed to request an IO. Another commenter questioned whether requests for IOs would be considered if received beyond 10 days following the BRC.

Agency Response: The Division believes that 10 calendar days is adequate time to prepare and submit a request following a BRC. An injured employee, with either ombudsman assistance or attorney representation, should already have all supporting documentation in their possession and 10 calendar days should be sufficient time to file the request. Requests received more than 10 days after conclusion of a BRC will not be considered. It is anticipated that most requests will be provided to the carrier's representative at the conclusion of an unsuccessful BRC and submitted to the Austin Central Office immediately following the BRC.

Comment: A commenter believes the Division should be able to issue IOs between a first and a second BRC, without the dispute being set for a CCH, while the parties continue to work on the issues. The commenter feels that only allowing a request for an IO when a CCH has been scheduled will force disputes to CCH that should be resolved at the BRC level.

Agency Response: Amendments to Labor Code §410.023 by HB 7 support the parties making bona fide efforts to resolve disputes prior to asking for a BRC. The Division believes that if the parties make bona fide resolution efforts prior to requesting a BRC, disputes are likely to be resolved at the BRC level and will not go to a CCH. A party should only request an IO after all attempts at resolving the issues through mediation at a BRC have failed.

Section 141.6(b): A commenter suggested that the simplest way for an injured employee to request an IO is to do so verbally rather than being required to complete a form.

Agency Response: The Labor Code requires that someone other than the BRO that conducted the BRC must act on a request for an IO, and as a result, verbal requests are not practical. The party needs to provide written evidence with the request that can be forwarded to the person making the decision regarding the issuance of an IO.

Sections 141.6(c) and (d): Several commenters requested that the rule be changed to provide that while the copy of the request for IO shall be provided to the carrier's representative at the BRC, the insurer shall be responsible for determining who will file the response on its behalf. Several commenters felt that subsection (d) requires that the response to a request for IO be filed by the carrier's representative that appeared at the BRC. One commenter suggested that the rule require the request for IO be provided to both the carrier and the carrier's representative at the BRC to expedite communication, while another commenter felt that only a copy to the carrier's representative was necessary.

Agency Response: The Division believes that provision of the request for IO to the person that represented the carrier at the BRC is the most efficient way to provide notice to the carrier. The person who appeared at the BRC on behalf of the carrier will be known to the requestor and the carrier's representative can easily provide notice to the appropriate carrier employee. The rule does not require the same person that represented the carrier at the BRC to file the response. That is the carrier's decision. The rule provides that "a carrier representative" shall file a response. The carrier may choose the same person that represented it at the BRC, or another representative. A Division form will be available for requesting an IO. The form will require the requester to identify when, how, and to which carrier's representative the request was sent.

Section 141.6(c): A commenter recommends that "may" be changed to "shall" to clearly reflect that a delay will occur.

Agency Response: The Division disagrees. A delay in processing of a request is very likely if a copy of a request for IO is not sent to the carrier's representative; however, a delay in every situation is not inevitable.

Comment: One commenter states that requiring all requests to go to the Central Office delays the process. The commenter recommends that the Division either allow the party to request an IO from the field office after the BRC or allow the party to request an IO at the BRC and have the BRO document the request and the response for someone else to consider. A commenter feels the prolonged process nullifies IOs as a viable remedy in situations where the carrier totally fails to justify the denial of benefits.

Agency Response: The Division disagrees that centralized processing unduly delays the process. The process was centralized for consistency purposes. Electronic or facsimile transmission should be available to all requesters, but any request can be submitted in a field office, where it will be immediately forwarded to the designated staff in the Austin Central Office. The rule provides that a request for an IO will be acted on within 10 days of receiving the request and the Division disagrees that this timeframe removes IOs as a viable remedy.

Comment: Several commenters felt that requiring an "immediate" response from the carrier's representative is unclear and not a reasonable timeframe due to the schedules of carrier representatives. A commenter stated that claimants are allowed 10 days to prepare a request for IO and requested that the carrier's representative be allowed at least 10 working days to file a response. Another commenter suggested that three business days or five calendar days to respond is sufficient. Some commenters additionally asked that the rule include where and to whom the response is to be filed. Another commenter suggested changing the word "shall" to "may" to allow carrier representatives the option to not respond if they wish.

Agency Response: The rule requires that the carrier file an "immediate" response, which the Division believes should be within 5 days of receiving the request for IO, otherwise the Division will contact the carrier by telephone if no response has been filed. The main purpose of this phone contact is for the Division to ascertain if the carrier received a copy of the request for IO. The Division believes that all information needed to respond to a request will have been produced and discussed at the BRC and five calendar days is ample time for a carrier to respond. If a carrier prefers to not present evidence to rebut a request for IO, the carrier should communicate this information to the Austin Central Office within the allotted 5 days. The Division form used by the requester will inform the carrier where to send its response to a request for IO.

Section 141.6(d): A commenter suggested changing the subsection to require the Division to provide a copy of the request to the carrier if necessary, rather than it being permissive.

Agency Response: The Division agrees and has changed the language.

Section 141.6(e): One commenter suggests that the rule provide that a request is not considered "received" for the purposes of §141.6(e) until copies are provided to the carrier.

Agency Response: "Within 10 days of receiving a request" in §141.6(e) refers to the Division's receipt of an IO request. Because the Division will contact the carrier's representative if no response is received within five days, the carrier's representative will be provided a copy of the request at that time, if they did not receive one earlier. This allows sufficient time for the carrier's representative to file a response before the Division must act on the request.

Comment: A commenter felt the Division should be able to act on a request for an IO within three days. Another commenter felt that in a situation where a request for IO is made at a BRC and a carrier responds the next day, 10 days is too long for the Division to act on the request - five days is sufficient. Other commenters asked that 10 working days be allowed for the Division to act. One commenter suggested that an exception to the 10-day requirement be added. Some commenters noted that the rule should allow additional time for the Division to issue an IO when the requesting party fails to send a copy of the request to the carrier. Another commenter felt the 10-day timeframe is appropriate.

Agency Response: Depending on the complexity of the dispute, the Division anticipates acting on most requests within two work-

ing days of receiving a response or receiving confirmation that no response will be filed. Unless a teleconference is scheduled, this rule provides for a request for an IO to be acted on by the Division within 10 days of receiving the request. If no response is received from the carrier within five days of receiving a request, the Division will request one from the carrier, with the understanding that the request will be acted upon within the allotted time, whether or not a response is received. The Division believes that if the requesting party does not provide a copy of the request to the carrier, five days is adequate time for the Division to seek a response from the carrier and act on the request.

Comment: One commenter felt that, with credibility issues, it would be beneficial to have someone in the field office acting on requests for IOs.

Agency Response: While face-to-face proceedings are best for the evaluation of witness demeanor, it is not practical in this situation. The staff designated by the Commissioner will have a great deal of experience in evaluating IO requests. In addition, if the Division deems it necessary for a fair evaluation, a teleconference can be scheduled.

Sections 141.6(e) and (f): Several commenters felt teleconferences should not be necessary; they cause delay and add costs and request the deletion of subsections (e)(3) and (f). Other commenters think a teleconference should be conducted if requested.

Agency Response: The Division anticipates that most of the decisions will be based on written documentation, but unusual circumstances could arise requiring the Division staff to seek clarification of the issues and positions from the parties. In those situations, communication among the parties via a teleconference may result in additional time but will be necessary to assure all issues are addressed. The Division will consider all requests for a teleconference and will schedule one if a legitimate need is identified. The need for a teleconference must be balanced with the cost and additional time required.

Section 141.6(f): One commenter suggested that if a teleconference is scheduled, the Division should be required to act on the request within five days of the teleconference.

Agency Response: The Division agrees and a limit of five days has been included.

Section 141.6(g): Several commenters contend that the Division has the authority to issue an IO to suspend benefits and suggested this addition to subsection (g).

Agency Response: The Division believes there is no authority to issue an IO to suspend the payment of benefits. In 1999 the 76th Legislature amended Labor Code §410.032 to delete the BRO's authority to issue an IO to suspend the payment of benefits. While HB 7 made some changes to this section, it did not change the language regarding what an IO could address. If reasonable grounds exist, an IO is not required for a carrier to suspend benefits.

Section 141.6(i): Several commenters think carriers should be allowed 10 "working" days to comply with an order. Another commenter suggested five "working" days.

Agency Response: Based on its experience, the Division believes that five calendar days is sufficient time for a carrier to comply with an order. This timeframe has not been changed from the previous rule and the Division's experience has shown that this is a sufficient amount of time. The Division reminds carriers that orders should be complied with as soon as possible and five calendar days is the maximum time allowed.

Section 141.6(l): A commenter suggested inclusion of an explanation of how a participant can request an IO prior to a BRC.

Agency Response: A request for an order will not be considered prior to the parties attempting to mediate their differences at a BRC. This rule addresses the process utilized by designated staff to issue IOs after a BRC, pending a CCH.

Section 141.7(d): A commenter suggested that subclaimants be added to the persons who should be furnished with the BRO's report.

Agency Response: The Division agrees and has added subclaimants to the list of individuals that shall receive a copy of the BRO's report.

For, with changes: State Office of Risk Management; Insurance Council of Texas; Zenith Insurance Company; Office of Injured Employee Counsel; American Insurance Association; The Boeing Company; Texas Mutual Insurance Company; Property and Casualty Insurers Association of America; SAFRISK; Center for Injured Workers; and various individuals.

Against: None.

The amendments are adopted under Labor Code §§410.027, 410.032, 410.033, 402.00111, and 402.061. Section 410.027(a) provides that the commissioner shall adopt rules for conducting benefit review conferences. Section 410.032 provides that, as designated by the Commissioner, Division staff, other than the benefit review officer who presided or will preside at the benefit review conference, shall consider a request for an interlocutory order and shall issue an interlocutory order if determined to be appropriate. The order may address accrued benefits, future benefits, or both accrued benefits and future benefits. Section 410.033 provides if there is a dispute in which two or more insurance carriers are liable for compensation for one or more compensable injuries, the Commissioner may issue an interlocutory order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§141.5. Description of the Benefit Review Conference.

(a) Definitions. As used in this section, "participant" means an individual entitled or permitted to attend and take part in a benefit review conference. Participants include:

(1) the parties;

(2) the parties' representatives;

(3) the employer exercising the right to present evidence relevant to the disputed issue or issues; and

(4) any other individual, at the discretion of the benefit review officer.

(b) Overview of the benefit review conference. The benefit review conference consists of three parts: opening, mediation, and closing.

(c) Opening. The benefit review officer shall:

(1) identify the case and introduce the parties and other participants;

(2) thoroughly inform the parties and participants of their rights and responsibilities under the Texas Workers' Compensation Act;

(3) explain the purpose of the conference and the procedures and time frame to be observed;

(4) identify and describe the disputed issues to be mediated; and

(5) elicit each party's statement of position regarding each disputed issue.

(d) Mediation. The benefit review officer shall:

(1) ask and answer questions of the parties and other participants;

(2) encourage the parties to discuss the disputed issues and ask and answer questions;

(3) permit the employer to present evidence relevant to the disputed issues;

(4) permit other participants to discuss the disputed issues and ask and answer questions, to the extent the benefit review officer deems appropriate;

(5) if necessary, caucus individually with each party;

(6) assist the parties to agree on specific options for resolution; and

(7) assist the parties in resolving disputed issues by agreement or settlement.

(e) Closing. The benefit review officer shall:

(1) assist the parties in reducing agreements or settlements to writing;

(2) identify any issues left unresolved; and

(3) if available information pertinent to the resolution of the disputed issue(s) was not produced at the benefit review conference, require a second benefit review conference to be scheduled if a second one has not already been conducted.

§141.6. Requesting Interlocutory Orders.

(a) An injured employee, subclaimant, or beneficiary may request from the Division an interlocutory order for the payment of accrued and/or future benefits within 10 days of the conclusion of a benefit review conference in which the unresolved issues were scheduled for a contested case hearing. An insurance carrier may only request an interlocutory order pursuant to Labor Code §410.033, for the purpose of requesting an order for multiple carriers to share in the payment of benefits pending a final decision regarding liability.

(b) The request shall be in writing in the form and manner prescribed by the Division and shall be specific as to the benefits being sought. All supporting documentation shall accompany the request.

(c) When a request is filed with the Division, the party making the request shall provide a copy of the request with all supporting documentation directly to the representative that appeared for the carrier at the benefit review conference. Failure to provide a copy to the carrier's representative may result in a delay of the processing of the request.

(d) Upon receipt of a request for an interlocutory order, a carrier's representative shall file an immediate response and submit any additional documentation for consideration. The Division shall contact the carrier's representative that appeared at the benefit review conference, electronically or by telephone, to request a response if one has not been received within five days. The Division shall provide a copy of the request to a carrier's representative if necessary.

(e) Within 10 days of receiving a request for an interlocutory order, Division staff, as designated by the Commissioner, shall either:

(1) deny the request for an interlocutory order;

(2) issue an interlocutory order as provided for in subsection (g) of this section, or;

(3) schedule a teleconference to take place within five days to consider written documentation and arguments of the parties regarding the request for an interlocutory order.

(f) If the Division schedules a teleconference, the Division shall provide the parties with the date and time of the teleconference by electronic transmission, personal delivery, or telephone. Other benefit review conference participants may participate in the teleconference at the discretion of the Division. Testimony will not be accepted and no official record will be made of a teleconference. Copies of any interlocutory order entered after a teleconference shall be sent to the parties within five days following the teleconference.

(g) Upon a determination that the issuance of an interlocutory order is appropriate, the Division may enter interlocutory orders as follows:

(1) when the benefit dispute involves payment of benefits, the Division may order the carrier to pay all or part of death, burial, medical, or income benefits. The order may address either or both accrued and future benefits. Such an order is binding until reversed or modified by an agreement or settlement, as provided by §147.7 of this title (relating to Effect on Previously-Entered Decisions and Orders), by an interlocutory order or by a decision rendered after a subsequent Division proceeding;

(2) when the benefit dispute involves the liability of two or more carriers for compensation for one or more compensable injuries, the Commissioner or Commissioner's designee may order each carrier to pay a proportionate share, determined by dividing the compensation due by the number of carriers potentially liable for benefits.

(h) An interlocutory order for payment of death, burial, income, or medical benefits shall be effective on the date signed by the designated Division staff.

(i) An insurance carrier shall comply with an interlocutory order to pay accrued benefits by issuing and delivering payment for income benefits accrued and unpaid no later than the fifth day after receiving the order and shall pay benefits in accordance with the order as and when they accrue.

(j) Payment of accrued and unpaid income or death benefits paid in accordance with an interlocutory order shall include interest pursuant to the Labor Code §408.064 and §408.081.

(k) Payment of medical benefits pursuant to an interlocutory order shall be made in accordance with Chapters 408 and 413 of the Labor Code.

§141.7. Division Actions After a Benefit Review Conference.

(a) If all disputed issues are resolved at the benefit review conference by agreement, the benefit review officer shall make the agreement part of the claim file.

(b) If all disputed issues are resolved at the benefit review conference by settlement, the benefit review officer shall submit the signed settlement to the Commissioner or Commissioner's designee for han-

dling as provided by Chapter 147 of this title (relating to Dispute Resolution by Agreement or Settlement). If the Commissioner or Commissioner's designee rejects the settlement, the parties may request a subsequent benefit review conference as provided by §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference).

(c) If all disputed issues are not resolved at the benefit review conference, no later than the fifth day after the close of the benefit review conference the benefit review officer shall submit a written report, as provided by Labor Code §410.031 and any signed agreement to the Division's central office in Austin.

(d) No later than the eighth day after receiving the benefit review officer's report, the Division shall furnish, by first class mail, electronically, or personal delivery, to the injured employee; injured employee's representative, if any; the insurance carrier; subclaimants; and the employer the following:

(1) a file-stamped copy of the report; and

(2) notice of the date, time, and location of the contested case hearing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2006.

TRD-200604311
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: September 4, 2006
Proposal publication date: February 17, 2006
For further information, please call: (512) 804-4288

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.33

The Texas Water Development Board (board) adopts amendments to 31 TAC §363.33, concerning the Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects, without changes to the proposed text as published in the June 30, 2006, issue of the *Texas Register* (31 TexReg 5252) and will not be republished. The changes are adopted to allow the board to set a unique interest rate for a revenue bond offered by an entity as consideration for the purchase of the board's interest in a state participation project.

Section 363.33(b)(4) of the board rules sets the interest rate for a revenue bond where the revenue bonds constitutes consideration for the purchase of the board's interest in a state participation project. Currently, the interest rate is set at either (1) the prevailing state participation lending rate or (2) the rate in effect at the time the board provided funds for the project, if bond proceeds were the source of funds and the bonds are outstanding. An amendment is adopted to §363.33(b)(4) to allow the board to set a unique interest rate for a revenue bond where no fixed purchase schedule was established at the time the Board initially provided funds for a state participation project. The new §363.33(b)(4)(C) is intended to provide the board with a vehicle to assist an entity to purchase the board's interest in a state participation project by offering flexibility in the consideration offered by the entity for such a purchase.

No comments were received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code, §6.101.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 16, Subchapter E.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2006.

TRD-200604336
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Effective date: September 5, 2006
Proposal publication date: June 30, 2006
For further information, please call: (512) 475-2052

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER B. NATURAL GAS

34 TAC §3.15

The Comptroller of Public Accounts adopts the repeal of §3.15, concerning gas marketing costs, without changes to the proposed text as published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4833).

The repeal is necessary because the entire text of §3.15 was incorporated into the tax code by House Bill 2425, 78th Legislature, 2003, which amended Tax Code, Chapter 201.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code §201.101.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2006.

TRD-200604321
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 5, 2006
Proposal publication date: June 16, 2006
For further information, please call: (512) 475-0387

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SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.68

The Comptroller of Public Accounts adopts the amendment to §3.68, concerning United States and foreign military personnel stationed in Texas, without changes to the proposed text as published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4833).

The amendment updates the members of the North Atlantic Treaty Organization and provides information on identifying domicile and legal residence.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§152.021, 152.022, and 152.023.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2006.

TRD-200604326
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 5, 2006
Proposal publication date: June 16, 2006
For further information, please call: (512) 475-0387

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SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.292

The Comptroller of Public Accounts adopts an amendment to §3.292, concerning repair, remodeling, maintenance, and restoration of tangible personal property, without changes to the proposed text as published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4834).

Subsections (b) and (e) are amended to reflect the new titles of §3.290 and §3.357 referenced. Other changes are amended for clarity.

No comments were received regarding adoption of the amendment.

This section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.0101.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2006.

TRD-200604323
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 5, 2006
Proposal publication date: June 16, 2006
For further information, please call: (512) 475-0387

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34 TAC §3.311

The Comptroller of Public Accounts adopts an amendment to §3.311, concerning auctioneers, brokers, and factors, without changes to the proposed text as published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4836).

Subsection (d)(1) and (2) is amended to reflect the new title of §3.316 referenced.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The section implements Tax Code, §151.008 and §151.024.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2006.

TRD-200604324
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 5, 2006
Proposal publication date: June 16, 2006
For further information, please call: (512) 475-0387

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34 TAC §3.336

The Comptroller of Public Accounts adopts an amendment to §3.336, concerning gold, silver, coins, and currency, without changes to the proposed text as published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4837).

Subsection (a) is amended to eliminate obsolete provisions regarding the State Purchasing and General Services Act, §11.05.

Subsection (c) is amended to eliminate reference to a rule that is obsolete.

No comments were received regarding adoption of the amendment.

This section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The section implements Tax Code, §151.336.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2006.

TRD-200604325
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 5, 2006
Proposal publication date: June 16, 2006
For further information, please call: (512) 475-0387

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SUBCHAPTER Z. COASTAL PROTECTION FEE

34 TAC §3.692

The Comptroller of Public Accounts adopts an amendment to §3.692, concerning definitions, reporting requirements and amount of fee, without changes to the proposed text as published in the July 7, 2006, issue of the *Texas Register* (31 TexReg 5442).

This section is being amended pursuant to Senate Bill 1863, 79th Legislature, 2005. Senate Bill 1863 changed language to reduce the rate of the fee and reduce the maximum and minimum thresholds for the Coastal Protection Fund (Natural Resources Code, §40.155(a), (b)).

No comments were received regarding adoption of amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Natural Resource Code, §40.155.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2006.

TRD-200604327
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 5, 2006
Proposal publication date: July 7, 2006
For further information, please call: (512) 475-0387

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SUBCHAPTER JJ. CIGARETTE AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1204

The Comptroller of Public Accounts adopts an amendment to §3.1204, concerning administrative remedies for violations of Health and Safety Code, Chapter 161, Subchapter H or K, without changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5063).

The amendment removes as a partner organization that may notify the comptroller of violations the organization named Drug Abuse Resource Education (DARE), and replaces it with the current organization named Texas Statewide Tobacco Education and Prevention (STEP) in view of the organization's name change.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The adoption implements the Health and Safety Code, §161.090.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2006.

TRD-200604349
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 6, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 475-0387

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SUBCHAPTER LL. OYSTER SALES FEE

34 TAC §3.1261

The Comptroller of Public Accounts adopts an amendment to §3.1261, concerning reports, payments, and record keeping requirements, without changes to the proposed text as published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4839).

Due to a reorganization of the state's health services agencies as a result of legislation, the former Seafood Safety Division is now the Seafood and Aquatic Life Group, and the former Department of Health is now a part of the Department of State Health Services. The adopted amendment conforms the agency references to the legislation.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Health and Safety Code, §436.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2006.

TRD-200604322
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 5, 2006
Proposal publication date: June 16, 2006
For further information, please call: (512) 475-0387

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PART 10. TEXAS PUBLIC FINANCE AUTHORITY

CHAPTER 223. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

34 TAC §223.1

The Texas Public Finance Authority (Authority) adopts new §223.1, without changes to the proposed text as published in the June 30, 2006, issue of the *Texas Register* (31 TexReg 5253), relating to Historically Underutilized Businesses. The purpose of the new section is to comply with the Texas Government Code, §2161.003, which requires state agencies to adopt the rules of the Texas Building and Procurement Commission (TBPC) for historically underutilized businesses, 1 Texas Administrative Code, §§111.11 - 111.28. The rules of the TBPC specify requirements for state agencies to make a good faith effort to include historically underutilized business participation in contracts for goods and services.

No comments were received regarding the adoption of the new section.

The new section is adopted under the authority of Texas Government Code, §2161.003, which requires state agencies to adopt the TBPC rules as the agency's own rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2006.

TRD-200604361
Kimberly Edwards
Executive Director
Texas Public Finance Authority
Effective date: September 7, 2006
Proposal publication date: June 30, 2006
For further information, please call: (512) 463-3143

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

The Commissioner of Insurance adopts four endorsements proposed by the staff of the Personal and Commercial Lines Division of the Texas Department of Insurance. The adopted endorsements include HO-115, entitled "Loss of Use Due to Mandatory Evacuation" (for use with Texas Homeowners Policy Forms A, B, and C); HO-116, entitled "Loss of Use Due to Loss of Utilities" (for use with Texas Homeowners Policy Forms A, B, and C); HO-115A, entitled "Loss of Use Due to Mandatory Evacuation" (for use with Texas Homeowners Tenant Policy Forms B and C and Texas Homeowners Condominium Policy Forms B and C); HO-116A, entitled "Loss of Use Due to Loss of Utilities" (for use with Texas Homeowners Tenant Policy Forms B and C and Texas Homeowners Condominium Policy Forms B and C). The endorsements are for use by an insurer at the insurer's option when writing residential property insurance. HO-115, HO-116, and HO-116A are adopted without change, while HO-115A is adopted with changes to the proposal noticed in the June 23, 2006 issue of the *Texas Register* (31 TexReg 5149). No hearing was requested on the proposed endorsements. The Department received several comments concerning the proposed endorsements.

Staff of the Personal and Commercial Lines Division of the Texas Department of Insurance filed the original petition (Reference No. P-0606-09-I) on this matter June 14, 2006. The petition requested that the Commissioner adopt four optional endorsements to address the costs associated with additional living expenses that result from mandatory evacuations or an extended loss of utilities. For an additional premium, the endorsements would provide coverage for additional living expenses resulting from these events.

After a careful review of the staff's filing and in consideration of the comments submitted by outside parties, the Commissioner finds that the endorsements should be adopted subject to the following two provisos. First, the provision in proposed HO-115A that reads: "For the purpose of this endorsement, mandatory evacuation shall mean an evacuation ordered by any civil authority of all or part of the population from a stricken or threatened area under its jurisdiction" is changed to delete the words "a stricken or threatened" and to substitute the word "an." HO-115A provides coverage for additional living expenses for tenants and condominium unit owners under certain conditions when a civil authority orders a mandatory evacuation. This change in HO-115A is necessary for consistency with HO-115, which provides coverage for additional living expenses for homeowners under certain conditions when a civil authority orders a mandatory evacuation. Second, insurers that choose to use these endorsements must file rules and rates in accordance with the applicable provisions of the Insurance Code Article 5.13-2.

A general description of the new endorsements adopted for use with Texas Homeowners Policy Forms A, B, and C follows:

A new endorsement, HO-115, entitled "Loss of Use Due to Mandatory Evacuation." For an additional premium, the endorsement provides coverage for homeowners who incur additional living expenses when a civil authority orders a mandatory evacuation. The ordered evacuation must be in effect for a period of twenty-four consecutive hours for coverage to apply. The endorsement imposes other coverage limitations. No deductible clause applies.

A new endorsement, HO-116, entitled "Loss of Use Due to Loss of Utilities." For an additional premium, the endorsement provides coverage for homeowners who incur additional living expenses as a result of an extended loss of utilities. Utility service, as defined in the endorsement, must be unavailable for a period lasting longer than twenty-four hours for coverage to apply. The endorsement imposes other coverage limitations. No deductible clause applies.

A general description of the new endorsements adopted for use with Texas Homeowners Tenant Policy Forms B and C and Texas Homeowners Condominium Policy Forms B and C follows:

A new endorsement, HO-115A, entitled "Loss of Use Due to Mandatory Evacuation." For an additional premium, the endorsement provides coverage for tenants and condominium unit owners who incur additional living expenses when a civil authority orders a mandatory evacuation. The ordered evacuation must be in effect for a period of twenty-four consecutive hours for coverage to apply. The endorsement imposes other coverage limitations. No deductible clause applies.

A new endorsement, HO-116A, entitled "Loss of Use Due to Loss of Utilities." For an additional premium, the endorsement provides coverage for tenants and condominium unit owners who incur additional living expenses as a result of an extended loss of utilities. Utility service, as defined in the endorsement, must be unavailable for a period lasting longer than twenty-four hours for coverage to apply. The endorsement imposes other coverage limitations. No deductible clause applies.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Article 5.13-2 and Article 5.96 of the Insurance Code. The proposed endorsements are adopted pursuant to the Insurance Code Articles 5.13-2 and 5.96. Article 5.13-2 §8(e) provides that the Commissioner may promulgate policy forms, endorsements, and other related forms that insurers may use, at their discretion, in lieu of the insurer's

own forms in writing insurance subject to Article 5.13-2. Article 5.96 authorizes the Commissioner to promulgate policy and endorsement forms for fire and allied lines of insurance, which includes residential property insurance.

This notice is made pursuant to the Insurance Code Article 5.96. Article 5.96(k) exempts it from the requirements imposed by the Administrative Procedure Act, Government Code Chapter 2001. Pursuant to Article 5.96(i), the order will take effect fifteen days after this notice is published in the *Texas Register*. The endorsements as adopted by the Commissioner are on file with the Chief Clerk's Office of the Texas Department of Insurance and are incorporated by Commissioner Order No. 06-0859.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that Endorsement Number HO-115, entitled "Loss of Use Due to Mandatory Evacuation;" Endorsement Number HO-116, entitled "Loss of Use Due to Loss of Utilities;" Endorsement Number HO-115A, entitled "Loss of Use Due to Mandatory Evacuation;" and Endorsement Number HO-116A, entitled "Loss of Use Due to Loss of Utilities," which are attached to this order and incorporated into this order by reference, are adopted to be effective fifteen days after notice of this adoption is published in the *Texas Register*.

TRD-200604414
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 21, 2006

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning September 2006, will review and consider for readoption, revision, or repeal Chapters 101, General Administration; 103, Rulemaking Procedure; and 104, Procedure for Review of Applications, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting these chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Rules Proposed" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-200604363
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: August 18, 2006

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §10.45(g)

All Seed Classes	
Disease	**Maximum %**
Leafroll	1.0
Total Mosaic Allowed	3.0
Mosaic (Visually Severe)	1.0
Mild Mosaic	3.0
Other Virus	0.5
Haywire	2.0
Spindle Tuber	0
Bacterial Ring Rot	0

Figure: 4 TAC §10.47

A laboratory approved by the department shall complete the following test(s).

Description	Test	# Samples
Mother Plants	[1]PVX,S,Y,A,M, M-ID, PLRV, Potato Latent, PSTV,Cms & Erw	Individual
Nuclear	PVX,S,Y,M,Cms & Erw	Individual - Combined 5/test
Greenhouse foliage	PVX,S or any other virus tested for by using ELISA	Individual - Combined 5/test - 10 min. to 1% of plant pop.
Greenhouse tubers	Erw (lenticel) Cms (IFAS and/or ELISA)	Individual with 10 min. to 0.5% of plant pop.. Up to 100 per group with 10 min. to 1% of plant pop.
Field foliage	G1 - PVX,S	G1- Individual - 25 min. to 1% of plant pop.
	G2,G3 - PVX + PVY	G2 - Individual - 200/acre with 200 min.
	on cultivars with latent reactions such as Russet, Norkotah, Shepody, etc.	G3 - Individual -20/acre with 100 min. G1-3 combined 5/test

[1]Potato viruses X, S, Y, A and M, M-Idaho, potato latent, PLRV (potato leafroll virus), PSTV (potato spindle tuber viroid), Cms (Clavibacter michiganensis subsp. sepedonicus), Erw (Erwinia carotovora subspp. atroseptica and carotovora)

A copy of test results from an approved laboratory shall be provided to the department. Laboratory testing for nuclear and G1-3 seed lots are defined under Seed Sources and Disease Tolerances.

Figure: 4 TAC §10.48(d)

Table 1. Percentages Allowed by Class - First Inspection

Item	A	B	C	D
Potato Leafroll Virus	0	0.1	0.5	0.8
Spindle Tuber Viroid	0	0	0	0.4
Mosaic Viruses	0	0.2	1.0	3.0
Other Virus	0	0.1	0.5	1.0
Total Virus Allowed			1.5	3.0
Haywire	0	0.2	1.0	1.0
Giant Hill	0	0.5	0.5	
Variety Mix	0	0.1	0.25	0.5
Bacterial Ring Rot	0	0	0	0
Blackleg[1]	0	0.1	2.0	4.0

Table 1-A. Percentages Allowed by Class - Second Inspection

Item	A	B	C	D
Potato Leafroll Virus	0	0.05	0.2	0.4
Spindle Tuber Viroid	0	0	0	0.1
Mosaic Viruses	0	0.1	0.6	2.0
Other Virus	0	0.05	0.5	0.5
Total Virus Allowed			0.7	2.4
Haywire	0.1	0.1	0.5	0.5
Giant Hill	0	0.5	0.5	0.5
Variety Mix	0	0.07	0.125	0.25
Bacterial Ring Rot	0	0	0	0
Blackleg[1]	0	0.1	2.0	4.0

[1]Generation 1and 2 seed lots exceeding specified blackleg tolerances shall be downgraded to the next appropriate generation level. Roguing of these lots to restore them to blackleg tolerance will not be allowed.

Inspection policy: Applicants of Generations 1through 3 seed lots may be given one additional opportunity to restore the seed lot to tolerance following the first and second scheduled inspections providing the following conditions are met:

1. The applicant agrees to complete roguing of the field as soon as possible and
2 Field conditions, plant development and other factors such as presence of insect vectors would not in the opinion of the inspector limit the accuracy and effectiveness of the roguing effort.

PVX (Lab Test): Will be performed on G1 through G3 seed lots with tolerances for G1=0 and G2=1.0. G1and G2 lots exceeding the PVX tolerances will be downgraded to the next appropriate generation level.

[2]At the applicant's option, Generations 4-6 seed lots may be tested for PVX and/or PVS. The Department will be notified at the time of application. Sampling procedures will be those used for Generation 3. PVX content of the tested lots may be listed on the label or bulk certificate at the applicant's option. Tolerances do not apply

Figure: 4 TAC §10.50(a)

All Certified Seed	
Grade Defect for Tubers	**Maximum %**
Stem end discoloration	5.0
Net Necrosis (Leafroll, after laboratory identification)	0.5
Net Necrosis (aster yellows)	2.0
Bacterial Ring Rot	0
Root Knot Nematode (visible tuber symptoms)	0
Corky Ring Spot (visible tuber symptoms coupled with confirmation of Tobacco Rattle Virus presence by accepted laboratory test)	0

Figure: 22 TAC §599.4(b)(8)

PROPER PRE-CONSTRUCTION SUBTERRANEAN TERMITE TREATMENTS
A Guide for Builders and Consumers

Texas Structural Pest Control Board
PO Box 1927
Austin, Texas 78767-1927
Telephone No. (512) 305-8250

I. Definitions

The Texas Structural Pest Control Board licenses pest control operators and regulates the application of pesticides for the prevention or control of subterranean termites. Because of the importance of treatments made to buildings under construction (commonly called pre-treats), this publication has been prepared for builders and consumers which hire pest control operators for these preventative termite treatments.

Pre-construction treatments may include soil treatments, bating systems, treatments of wooden structural elements, physical barriers, methods and other devices.

A pre-construction liquid soil termiticide treatment may be a full treatment or a partial treatment, defined in the following manner.

A. FULL TREATMENT

Effective preconstruction treatment for subterranean termite prevention requires the establishment of complete vertical and horizontal approved physical or chemical barriers between wood in the structure and the termite colonies in the soil.

For Horizontal Chemical Barriers, applications shall be made using a low pressure spray after grading is completed and prior to the pouring of the slab or footing to provide thorough and continuous coverage of the area being treated.

For Vertical Chemical Barriers, establish vertical barriers in areas such as around the base of foundations, plumbing lines, backfilled soil against foundation walls and other areas which may warrant more than just a horizontal barrier.

B. PARTIAL TREATMENT

A partial treatment is anything less than a full treatment as described above. A partial treatment only protects the areas treated from wood destroying insects. The areas chemically treated must be treated using at least the minimum labeled rate.

Physical barriers and devices installed at slab penetrations are considered partial treatments.

C. PRE-CONSTRUCTION TREATMENT WITH WOOD FRAMING

A pre-construction treatment of all or part of the wood framing as described in Board Rule 599.3(e) shall be disclosed as a wood treatment. Label instructions for wood framing treatments allow a wide variety of treatment strategies. More extensive treatments may provide greater protection than treatments designed to protect a specific area or location.

II. APPLICATION RATES

Labels can and do differ. Read and follow label directions. Builders and consumers should ask for a copy of the label.

1) Unless otherwise directed by the label, fill material to be covered by a slab is treated at a rate of 1 gallon per 10 square feet (soil fill). For coarse fill, use 1.5 gallons per 10 square feet or as specified on the product label.

2) Unless otherwise directed by the label, soil backfill areas next to walls, piers, pipes and under "critical areas" like slab expansion joints are treated with 4 gallons per 10 linear feet per foot of depth. (This includes fill areas inside chimneys and earth-filled porches).

3) Hollow masonry units receive 2 gallons per 10 linear feet. Though a concrete block wall may have multiple chambers (2 or 3 hole blocks), it is counted as one hollow void when calculating the amount of termiticide needed for treatment. Review specific label requirements for proper mixture rates and application procedures.

4) Wood applied termiticide treatments are to be applied according to label directions.

III. CONTACTING THE STRUCTURAL PEST CONTROL BOARD

The Texas Structural Pest Control Board does not regulate pricing of treatments. However, we are interested in situations where the price is only a fraction of the cost of materials needed to do the job correctly. Remember, comparing the bid price to the size of the structure and the cost of termiticide does not include costs such as insurance, travel, labor and other costs associated with overhead. **FURTHER, A CONTRACTOR MAY HAVE CIVIL OR CRIMINAL LIABILITY IF THEY CONSPIRE TO VIOLATE STRUCTURAL PEST CONTROL BOARD REGULATIONS.**

Termiticide labels have specific directions about the product's use. Pest Control Companies must follow these directions and Texas Structural Pest Control Board regulations including §599.3(a) and (b):

(a) All pesticide applications must be made by using the application rate and methods and by following the precautionary statements on the labeling of the pesticide being used.
Treatments using less than label recommended concentrations at higher volume applications are prohibited for preconstruction treatments,
(b) for a full treatment the entire structure shall be treated to provide a continuous horizontal and vertical barrier as described on the pesticide label including the posting of a treatment sticker and the final treatment to be performed within 30 days of notification of completion of landscaping or one year from the date of completion of construction, whichever comes first. Except, when construction has proceeded to the point that all areas cannot be treated before the company providing the treatment is called to perform the job, a partial treatment will be permitted if the owner of the structure or the person in charge of the construction and the certified applicator for the pest control company sign a statement attesting to the conditions, and attach it to the contract with an amended graph showing the exact areas treated.
(c) Primary preconstruction treatments of wood framing shall be applied at full label rates and directions.

Termiticides must be used at the prescribed rate, to protect the structure from termites and to comply with federal and state regulations.

The Texas Structural Pest Control Board will inspect specific treatments in response to consumer complaints or information that indicates a possible improper treatment. **THE PEST CONTROL COMPANY IS REQUIRED TO INFORM THE TEXAS STRUCTURAL PEST CONTROL BOARD 4-24 HOURS PRIOR TO PERFORMING THE TREATMENT.** The prior treatment notification requirement is specific to commercial preconstruction and is not required for single family dwellings. The Board will also inspect treatments during compliance inspections of pest control company operations and will randomly make inspections of job sites where treatments are in progress. Such on-site inspections typically involve collecting samples of the tank mix and soil samples of treatment sites following application. Questions about termite treatment procedures should be directed to the Texas Structural Pest Control Board office.

IV. TREATMENT REQUIREMENTS

For existing or post construction treatments, a variety of treatments may be used that include chemical, approved Texas Structural Pest Control Board physical barriers, methods and devices, and baiting systems. The Texas Structural Pest Control Board will inspect some treatments in progress to ensure that proper procedures are being used. Keep in mind that an inspection by the Texas Structural Pest Control Board is not required for the treatment or construction to proceed.

It is the philosophy of this agency to combine firm but fair enforcement actions with an educational approach to obtain regulatory compliance.

TREATMENT IS:

A. Full []
B. Partial []
C. Wood []
D. Bait []
E. Commercial []
F. Single Family []

I have received a copy of the Guide for Builders and Commercial Customers.

_____
Signature of Customer or Contractor

Date
SPCB/D4

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 12:00 p.m. on September 19, 2006 at 1005 Congress Avenue, Suite B10 (Conference Room), Austin, Texas 78701, on the proposed issuance by the Issuer of one or more series of revenue bonds (the "Bonds") to provide financing for the acquisition of single family mortgages in the State of Texas, pursuant to its low income home loan program (the "Project"). The maximum aggregate face amount of the Bonds to be issued with respect to the Project is $25,000,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Project and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to David Long at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 402.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at 1-888-638-3555, ext. 400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Long at dlong@tsahc.org.

TRD-200604608
David Long
President
Texas State Affordable Housing Corporation
Filed: August 23, 2006

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Department of Aging and Disability Services

Public Notice Announcing Pre-application Orientation (PAO) for Enrollment of Medicaid Waiver Program Providers

The Department of Aging and Disability Services (DADS) will hold a Pre-Application Orientation (PAO) for persons seeking to participate as a program provider in the Home and Community-based Services (HCS) Program.

The PAO will be held at 8:45 a.m., Monday, December 4, 2006, in Austin, Texas, at the J. J. Pickle Center. Persons wanting to attend the PAO must request a registration form by mail or by fax. Faxed requests must be sent to (512) 438-5522. Mailed requests must be sent to: Department of Aging and Disability Services; Michael J. Moore, Contract Specialist; Community Services Contracts (MC W-517); P.O. Box 149030; Austin, Texas 78714-9030

Note: All written requests must include first and last name along with a complete mailing address and a telephone number. All requests **must** be legible.

Upon an applicant's written request, DADS will provide the applicant with information regarding the provider application and enrollment process and a registration form for the PAO. To attend the PAO, an applicant must submit a completed registration form to DADS in a timely manner. DADS considers a completed registration form to be submitted timely only under the following conditions:

(1) If mailed via the US Postal Service, the completed registration form bears a postmark date no later than Friday, November 3, 2006;

(2) if sent via a common or contract carrier, a receipt by the carrier shows that it was placed in the hands of the carrier no later than Friday, November 3, 2006; or

(3) if hand delivered, it is delivered directly to DADS, Community Services Contracts Unit, 701 W. 51st Street (MC W-517), Austin, Texas, no later than Friday, November 3, 2006.

Persons requiring an interpreter for the deaf or hearing impaired, or any other accommodation, must contact, Michael J. Moore at (512) 438-2285, or by contacting the TTY telephone line of the Texas Relay at 1-800-735-2988 at least 72 hours before the PAO. Michael J. Moore may be contacted for any additional information concerning the PAO.

Note: In accordance with 42 Code of Federal Regulations (CFR) §455.106, all applicants must disclose to DADS criminal history record information about a "person with an ownership or control interest" in the applicant, or an "agent" or "managing employee" of the applicant. Submission of the criminal history record information will be required with the DADS Application for Participation. Further instructions will be provided with the registration packet and will be available on the DADS Internet website at the following address: http://www.dads.state.tx.us/business/mental_retardation/hcs/index.html.

TRD-200604350
Kenneth I. Owens
General Counsel
Department of Aging and Disability Services
Filed: August 17, 2006

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions

affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 12, 2005, through August 18, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on August 24, 2005. The public comment period for these projects will close at 5:00 p.m. on September 23, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Erskine Energy, LLC; Location: The project site is located within Galveston Bay, in State Tract (ST) 5-8A, approximately 12 miles easterly of Baytown, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 327502; Northing: 3174467. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production activities for the proposed ST 5-8A Wells No. 1 and 2. Such activities include installation of typical marine barges and keyways, and production structures with attendant facilities. CCC Project No.: 05-0400-F1; Type of Application: U.S.A.C.E. permit application #23871 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Erskine Energy, LLC; Location: The project site is located within Galveston Bay, in State Tract (ST) 6-7A, approximately 12 miles easterly of Baytown, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 326948; Northing: 3286059. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production activities for the proposed ST 6-7A Well No. 1. Such activities include installation of typical marine barges and keyways, and production structures with attendant facilities. CCC Project No.: 05-0401-F1; Type of Application: U.S.A.C.E. permit application #23872 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Texas Gulf & Harbor Ltd.; Location: The project is located at in uplands and wetlands adjacent to Corpus Christi Bay, 2 miles south of Port Aransas on the west side of State Highway (SH) 361, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Aransas, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 687358, Northing: 3076258. Project Description: The proposed project is referred to as Newport Landing, and consists of the construction of a residential canal development inclusive of a marina and access channels that connect to the existing Island Moorings Subdivision to the north, and a proposed development named Newport Marina to the south (application 23357). Approximately 2,365,000 cubic yards will be dredged, of which approximately one-half will be retained onsite and the balance offsite on the east Gulf side of SH 361. CCC Project No.: 05-0404-F1; Type of Application: U.S.A.C.E. permit application #23764 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Texas Gulf & Harbor Ltd.; Location: The project is located adjacent to Corpus Christi Bay and State Highway 361, approximately 3 miles south of Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Aransas, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 684538 (POB) & 686904 (POE); Northing: 3071258 (POB) & 3074676 (POE). Project Description: This notice represents the second public notice for this project, the first which was dated 13 October 2004. The applicant proposes to develop an approximate 835-acre tract of land for a destination resort complex known as Newport Marina that will include residential housing, retail establishments, a marina, channels and a golf course. The proposed work will result in the filling of 0.9 acres of jurisdictional areas, maintenance dredging of an entrance channel, and the excavation of 40 acres of jurisdictional areas, and the conversion of 85 acres of uplands into manmade canals, channels and expansion of the existing basin. The previous public notice called for the filling of 16.9 acres, excavation of 46.3 acres of jurisdictional areas, and the conversion of 78.7 acres of uplands to canal and marina basin. The proposed mitigation plan consists of the creation of 23 acres of new jurisdictional area, 14 acres which are onsite and 9 acres which are offsite. An additional 320 acres are to be preserved, of which 264 acres are onsite and 56 are offsite. CCC Project No.: 05-0405-F1; Type of Application: U.S.A.C.E. permit application #23357 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Michael Gonzales; Location: The project is located in wetlands adjacent to Laguna Madre, Lot 24, at 218 Huisache Street, South Padre Island, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone14; Easting: 682768; Northing: 2889213. Project Description: The applicant proposes to construct a pile-supported single-family residence over 1,575 square feet of a tidal slough that includes a mangrove fringe wetland, and over an additional 675 square feet of mudflat/saltwater coastal flat wetland. Only the work over the 1,575 square feet of tidal slough area is considered jurisdictional. No fill in jurisdictional areas is proposed. CCC Project No.: 05-0411-F1; Type of Application: U.S.A.C.E. permit application #23822 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: BOSS Exploration & Production Corporation; Location: The project is located in State Tract (ST) 346 of Corpus Christi Bay, approximately 3.8 miles southeast of Port Ingleside, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 683584; Northing: 3077376. Project Description: The applicant proposes to drill the ST 346 Well No. 1, install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, and a well head protector. CCC Project No.: 05-0415-F1; Type of Application: U.S.A.C.E. permit application #23798 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Swift Group, LLC; Location: The project is located on the Gulf Intracoastal Waterway (GIWW), east of the Freeport Entrance Channel and East Union Bayou, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 275845; Northing: 3204806. Project Description: The applicant proposes to deepen to minus 25 feet mean low tide (MLT) a 2,700-linear-foot length of the GIWW. The current depth averages approximately 16 feet along the stretch proposed for dredging. The existing side slopes of the GIWW and bottom width of 90 feet would

be maintained. The applicant also proposes to deepen 700 linear feet of a private channel and slip to a depth of minus 25 feet mean low tide. The channels would be hydraulically dredged and the dredged material would be placed on uplands. A portion of land fronting the East Union Bayou would be mechanically excavated and the material would be used as levee construction material. The placement area that was originally authorized encompassed 12 acres of uplands. The applicant proposes to enlarge the placement area to include an additional 13 acres of uplands. Existing sheetpile on the southeast side of the slip would be removed. The existing moorings on the southeast side of the slip would be relocated to the slips new shoreline. The interior 250 feet along the inside of the slip was originally authorized for a minus 30 foot MLT depth and would be maintained at that depth. The channel and slip would be maintained to minus 25 feet MLT if necessary. The applicant proposes to extend the time to conduct work on the project for another 5 years and to extend the maintenance dredging for another 10 years. CCC Project No.: 05-0418-F1; Type of Application: U.S.A.C.E. permit application #15551(04) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Franklin Jones III; Location: The project is located along West Galveston Bay, Mensell Bayou and the Spanish Grant Channel, at 12540 Stewart Road, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 313507; Northing: 3235388. Project Description: The applicant proposes to amend an existing Department of the Army (DA) permit by widening Camino Real Road by 25 feet; revising the entrance to a portion of the development by removing its connection to Spanish Grant Channel and instead constructing a new entrance canal within Mensell Bayou; converting an upland house lot along the Spanish Grant Channel to a boat basin; relocating a small inland pond; constructing three piers that extend into Mensell Bayou; replacing the type and location of bridges to be constructed within the development; filling an additional 1.04 acres of wetland along the northern project boundary for roadway work and modifying the previously authorized mitigation plan to include compensation for such impacts. Minor design changes in the footprint of the development have also occurred since issuance of the original permit. CCC Project No.: 05-0423-F1; Type of Application: U.S.A.C.E. permit application #22590(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200604407
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: August 21, 2006

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Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapters 403 and 2156, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the following contract award:

The notice of request for proposals was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2897) RFP #175n.

The contractors will provide Small Capitalization Core Equity Investment Management Services for the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to T. Rowe Price Associates, Inc., 100 East Pratt Street, Baltimore, Maryland 21202. The total amount of the contract is based on the fair market value of assets under management. The term of the contract is August 17, 2006 through August 31, 2011, with option for 2 additional 1-year renewals.

TRD-200604533
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: August 22, 2006

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of August 28, 2006 - September 3, 2006 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of August 28, 2006 - September 3, 2006 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of September 1, 2006 - September 30, 2006 is 8.25% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of September 1, 2006 - September 30, 2006 is 8.25% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200604415
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 22, 2006

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an

opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 2, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 2, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Babita Daware dba Ayalas Cleaners; DOCKET NUMBER: 2006-0916-DCL-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN104096144; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form; PENALTY: $948; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Bengal Corporation dba Cleaners 4 U; DOCKET NUMBER: 2006-0761-DCL-E; IDENTIFIER: RN102339082; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $948; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: BP Products North America Inc.; DOCKET NUMBER: 2006-0557-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: THSC, §382.085(a), by failing to control unauthorized emissions during an excessive emissions event; PENALTY: $30,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2006-0528-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Air Permit Numbers 1504A and PSD-TX-748, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of butadiene, benzene, butane, butene, hexane, methyl acetylene propadiene, pentane, pentene, propane, and propylene; PENALTY: $3,860; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: D R & S Inc. dba Worthington Laundry & Cleaners; DOCKET NUMBER: 2006-0648-DCL-E; IDENTIFIER: RN100545557; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew its registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: $948; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Thuc X. Bui dba Dry Clean Super Center; DOCKET NUMBER: 2006-0980-DCL-E; IDENTIFIER: RN104408414; LOCATION: Lancaster, Dallas County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; and 30 TAC §335.323(a) and the Code, §5.702, by failing to pay the hazardous waste generation fee; PENALTY: $948; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Rajah-GP, LP dba Expert Dollar Cleaners; DOCKET NUMBER: 2006-0668-DCL-E; IDENTIFIER: RN104309760; LOCATION: Wharton, Wharton County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form; PENALTY: $758; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Fortune 501 Plus, Inc. dba Swif-T Fast Food 23; DOCKET NUMBER: 2006-0539-PST-E; IDENTIFIER: RN102463460; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the required annual testing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain all components of the Stage II vapor recovery system in proper operating condition; PENALTY: $2,996; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Kendall County Water Control and Improvement District No. 1; DOCKET NUMBER: 2006-0518-MWD-E; IDENTIFIER: RN102837028; LOCATION: Comfort, Kendall County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0010414001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for ammonia nitrogen, total phosphorus, and chlorine; PENALTY: $6,840; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Momin, Inc. dba Hardys Laundromat & Discount Cleaners; DOCKET NUMBER: 2006-0990-DCL-E; IDENTIFIER: RN103956108; LOCATION: Huntsville, Walker County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Nasim Shakeeh dba Neighborhood Chevron; DOCKET NUMBER: 2006-1241-PST-E; IDENTIFIER: RN102322989; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: gas station; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Nirmal & Armaan Enterprises, Inc. dba MC Corner Texaco; DOCKET NUMBER: 2006-0333-PST-E; IDENTIFIER: RN101837441; LOCATION: Grapevine, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks for releases; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank numbers is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; and 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system; PENALTY: $3,840; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2006-0573-AIR-E; IDENTIFIER: RN100224674; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), TCEQ Air Permit Numbers 3855B and PSD-TX-876, Special Conditions 10.D and 32, Federal Operating Permit O-01324, Special Condition 21, and THSC, §382.085(b), by failing to maintain the pH level and by failing to maintain the fire rate at the permitted limit of 72 million british thermal units per hour; 30 TAC §117.203(a)(6)(D) and THSC, §382.085(b), by failing to limit the operation of emergency diesel pump engine (E1 Pump A) for operation, testing, or maintenance purposes; 30 TAC §122.143(4), Federal Operating Permit O-01324, Special Condition 3A(iv)(1), and THSC, §382.085(b), by failing to monitor visible emissions for A and B catalytic oxidizer catalyst traps and one diesel engine; and 30 TAC §§115.352(4), 116.115(c), and 122.143(4), TCEQ Air Permit Number 3855B and PSD-TX-876, Special Condition 43.E, Federal Operating Permit Number O-01324, Special Condition 1A and 21, Code of Federal Regulations (CFR) §63.167(a)(1), and THSC, §382.085(b), by failing to seal open-ended lines in volatile organic compound service; PENALTY: $15,540; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Southwestern Motor Transport; DOCKET NUMBER: 2006-1242-WQ-E; IDENTIFIER: RN102819703; LOCATION: Harlingen, Cameron County, Texas; TYPE OF FACILITY: transporter; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general storm water permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: XTO Energy Inc.; DOCKET NUMBER: 2006-0697-WR-E; IDENTIFIER: RN104726088; LOCATION: near Venus, Ellis County, Texas; TYPE OF FACILITY: oil and gas well drilling site; RULE VIOLATED: 30 TAC §295.11 and Temporary Water Use Permit Section B(4)(c), by failing to comply with its temporary water use permit; PENALTY: $1,900; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200604416
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 22, 2006

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Notice of Water Quality Applications

The following notices were issued during the period of August 17, 2006.

The following require the applicants to publish notice in the newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 3 has applied for a renewal of TPDES Permit No. 10797-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 675,000 gallons per day. The facility is located approximately 3/4 mile southeast of Nolanville, on South Nolan Creek in Bell County, Texas.

CITY OF MERTENS has applied for a renewal of TPDES Permit No. WQ0013271001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1300 feet east of Farm-to-Market Road 308, approximately 3400 feet southeast of the intersection of Farm-to-Market Road 308 and State Highway 22 in Hill County, Texas.

MINSA CORPORATION which operates a masa (corn) flour manufacturing plant, has applied for a major amendment to Permit No. WQ0003032000 to authorize an increase in the permitted irrigation area from 92 acres to 210.5 acres on property contiguous to the existing land application area. The current permit authorizes the disposal of process wastewater (cooking, steeping, and washing) and boiler blowdown from a milling operation, at a daily average flow not to exceed 300,000 gallons per day via irrigation of 92 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application areas are north and south of the intersection of County Road 1068 and U.S. Highway 84, adjacent to the east side of U.S. Highway 84, approximately 1.8 miles southeast of the intersection of U.S. Highway 84 and U.S. Highway 70, and approximately 1.5 miles southeast of the City of Muleshoe, Bailey County, Texas.

CITY OF RHOME has applied for a renewal of TPDES Permit No. WQ0010701001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located on Quail Ridge Drive approximately 750 feet west and 1,600 feet north of the intersection of the west bound lanes of State Highway 114 and the Burlington Northern Railroad in Wise County, Texas.

SMITH COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0010285001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 875,000 gallons per day. The facility is located 500 feet southeast of State Highway 155 and 0.4 mile south of the intersection of State Highway 155 and Farm-to-Market Road 3311 in Smith County, Texas. The treated effluent is discharged to an unnamed tributary; thence to Wiggins

Creek; thence to Harris Creek; thence to the Sabine River Below Lake Tawakoni in Segment No. 0506 of the Sabine River Basin.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

CITY OF ARCOLA has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize an increase in flow from 125,000 gallons per day to 300,000 gallons per day and from 320,000 gallons per day to 675,000 gallons per day in the interim phases. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 1,000 feet east of Farm-to-Market Road 521 and 3,200 feet south of the intersection of Farm-to- Market Road 521 and Texas Highway 6 in Fort Bend County, Texas.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to TOWN OF VAN HORN to clarify permit language regarding cumulative flow of wastewater effluent discharge and/or utilized for irrigation. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 405,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 45 acres of a golf course. The facility is located approximately 1 mile southeast of the intersection of U. S. Highway 10 and U.S. Highway 90 in Culberson County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200604657
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 23, 2006

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 18, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Amer Khan dba Oakwood One Stop; SOAH Docket No. 582-06-0313; TCEQ Docket No. 2004-1518-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Amer Khan dba Oakwood One Stop on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200604658
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 23, 2006

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Arlington	William D English II MD	L06011	Arlington	00	08/11/06
Houston	The Rose	L06010	Houston	00	08/07/06
Paris	Heart Clinic of Paris PA	L06013	Paris	00	08/10/06
Paris	Paris Cardiology Center	L06007	Paris	00	08/07/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Cardinal Health	L03398	Amarillo	35	08/10/06
Andrews	Andrews County Hospital District DBA Permian Regional Medical Center	L03158	Andrews	23	08/11/06
Austin	Austin Eye Clinic Association	L01642	Austin	12	08/02/06
Austin	Austin Positron Emission Tomography LP DBA Austin Pet & Imaging Center	L05861	Austin	03	08/14/06
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	22	08/10/06
Austin	Texas Department of State Health Services Laboratory Services Section	L01594	Austin	31	08/08/06
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	49	08/14/06
Beaumont	Christus Health Southeast Texas DBA Christus Hospital – St Elizabeth	L00269	Beaumont	104	08/09/06
Bonham	Attentus Bonham LP DBA Red River Regional Hospital	L03331	Bonham	31	08/08/06
Brownwood	Brownwood Hospital LP DBA Brownwood Regional Medical Center	L02322	Brownwood	55	08/03/06
Carrollton	Tenet Health System Hospitals Dallas Inc DBA Trinity Medical Center	L03765	Carrollton	51	08/07/06
Dallas	Baylor University Medical Center	L01290	Dallas	78	08/08/06
Dallas	Cardinal Health	L02048	Dallas	117	07/27/06
Dallas	Texas Oncology PA DBA Sammons Cancer Center	L04878	Dallas	33	08/10/06
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	05	08/09/06
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	71	08/09/06
Flower Mound	Imaging Specialists Group Ltd DBA Imaging Specialists	L05407	Flower Mound	11	07/31/06
Galveston	The University of Texas Medical Branch Office of Environmental Health and Safety	L01299	Galveston	72	08/09/06
Garland	Baylor Medical Center at Garland	L01565	Garland	41	07/31/06
Harlingen	Harlingen Medical Center	L05587	Harlingen	03	08/11/06
Houston	American Diagnostic Tech LLC	L05514	Houston	29	08/11/06
Houston	Cardinal Health	L05536	Houston	18	08/09/06
Houston	Diagnos Inc	L05971	Houston	02	08/09/06
Houston	Houston Northwest Medical Center	L02253	Houston	68	08/01/06
Houston	Institute of Biosciences and Technology	L04681	Houston	24	07/31/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	117	08/10/06
Houston	Nuclear Imaging Services LP	L05791	Houston	02	08/09/06
Houston	SKG Heart Center PLLC	L05906	Houston	01	08/09/06
Houston	St Lukes Episcopal Health System Corporation DBA St Lukes Episcopal Health System and Texas Heart Institute	L00581	Houston	85	08/03/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	V B Shenoy MD PA DBA Northwest Cardiology Clinic	L05513	Houston	03	08/08/06
Kilgore	Laird Memorial Hospital DBA Laird Memorial Hospital	L03496	Kilgore	24	08/11/06
Kingsville	Christus Spohn Health System DBA Christus Spohn Hospital Kleberg	L02917	Kingsville	41	08/11/06
La Porte	Cardiorad Inc	L05755	La Porte	08	08/11/06
La Porte	Cardiorad Inc	L05755	La Porte	09	08/14/06
Laredo	Laredo Texas Hospital Company LP DBA Laredo Medical Center	L01306	Laredo	55	08/01/06
Midland	West Texas Nuclear Pharmacy Partners	L04573	Midland	15	08/10/06
Mont Belvieu	Exxonmobil Chemical	L03119	Mont Belvieu	25	07/31/06
Mount Pleasant	TXU Power Monticello Plant	L04565	Mount Pleasant	11	08/02/06
Mt Vernon	East Texas Medical Center Mt Vernon	L05954	Mt Vernon	03	08/02/06
Paris	Physician Reliance Network Inc DBA Paris Regional Cancer Center	L04664	Paris	13	08/09/06
Pasadena	CHCA Bayshore LP DBA Bayshore Medical Center	L00153	Pasadena	80	08/01/06
Pasadena	Chevron Phillips Chemical	L00230	Pasadena	77	08/08/06
Pasadena	Kaneka Texas Corporation	L05050	Pasadena	03	08/07/06
Plano	Cardiovascular Consultants of North Texas DBA Cardiovascular Consultants Plano	L05690	Plano	02	08/09/06
Port Arthur	S K Rao MD PA	L05415	Port Arthur	11	08/02/06
Port Arthur	Smith and Thome Cardiovascular Consultants LLP	L05743	Port Arthur	03	08/02/06
Port Lavaca	Union Carbide Corporation A Subsidiary of the Dow Chemical Company Seadrift Operations	L00051	Port Lavaca	85	08/02/06
Richardson	Richardson Diagnostic Imaging I LP DBA Quantum Diagnostic Imaging	L05468	Richardson	07	08/02/06
San Angelo	Shannon Clinic	L04216	San Angelo	37	08/07/06
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L05358	San Antonio	23	08/10/06
San Antonio	Southwest General Hospital LLP DBA Southwest General Hospital	L02689	San Antonio	32	08/08/06
Sherman	North Texas Cardiology	L05395	Sherman	10	07/31/06
Sherman	Scela Inc DBA Cardinal Health	L05461	Sherman	09	08/10/06
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	04	08/10/06
Sugar Land	Schlumberger Technology Corporation	L05677	Sugar Land	03	08/03/06
Temple	Specialty Pharmacy Services Inc	L04883	Temple	24	08/10/06
Texas City	Ineos USA LLC	L00354	Texas City	34	08/01/06
Tyler	Allens Nutech Inc DBA Nutech Inc	L05511	Tyler	09	08/14/06
Tyler	Cardinal Health	L02987	Tyler	47	08/10/06
Tyler	Trinity Mother Frances Health System	L01670	Tyler	125	07/31/06
Victoria	Victoria of Texas LP DBA Detar Hospital Navarro	L01630	Victoria	43	08/11/06
Throughout Tx	Team Industrial Services Inc	L00087	Alvin	149	07/31/06
Throughout Tx	Global X-Ray & Testing Corp	L03663	Aransas Pass	99	08/02/06
Throughout Tx	Beavers Construction LLC DBA Beavers Contracting LLC	L05003	Aubrey	08	08/03/06
Throughout Tx	Cardinal Health	L02117	Austin	80	08/10/06
Throughout Tx	Kleinfelder	L01351	Austin	52	08/04/06
Throughout Tx	Texas Department of Transportation Construction Division Materials & Pavements Section	L00197	Austin	118	08/01/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Texas Department of Transportation Construction Division Materials & Pavements Section	L00197	Austin	119	08/08/06
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	95	08/07/06
Throughout Tx	Earth Tech	L05449	Brooks City Base	05	07/27/06
Throughout Tx	CME Testing and Engineering Inc	L05263	College Station	06	08/03/06
Throughout Tx	All Tech Inspection	L04974	Corpus Christi	11	08/10/06
Throughout Tx	Diamondback Energy Service DBA Diamondback Pumping Services LP	L06016	Cresson	01	08/03/06
Throughout Tx	Terracon Consultants Inc	L05268	Dallas	18	07/31/06
Throughout Tx	Irisndt Inc	L04769	Deer Park	30	08/08/06
Throughout Tx	Aitec USA Investments Inc DBA Aitec USA Inc and Weldsonix Inc	L05718	Houston	23	08/08/06
Throughout Tx	Cardinal Health	L01911	Houston	132	07/31/06
Throughout Tx	Cardinal Health	L01911	Houston	133	08/11/06
Throughout Tx	QC Laboratories Inc	L05956	Houston	02	08/08/06
Throughout Tx	Wood Group Logging Services Inc	L05262	Houston	18	08/08/06
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	129	08/01/06
Throughout Tx	PMI Specialist Inc	L04686	Liberty	14	08/10/06
Throughout Tx	Link Field Services Inc	L05383	Olden	17	08/08/06
Throughout Tx	Entech Laboratory Systems Inc	L05634	Perryton	04	08/10/06
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	132	08/03/06
Throughout Tx	City of Wichita Falls Public Works Engineering Division	L03217	Wichita Falls	15	08/03/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Beaumont	Lifeshare Blood Centers	L04884	Beaumont	12	08/08/06
Pampa	Titan Specialties LTD	L04920	Pampa	09	08/09/06
Wharton	South Texas Medical Clinics PA	L05163	Wharton	10	08/03/06
Throughout Tx	Professional Service Industries Inc	L00931	Fort Worth	115	07/24/06
Throughout Tx	Earth Engineering Inc	L05206	Houston	05	08/02/06

EXEMPTIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Houston	Doctors Hospital 1997 LP DBA Doctors Hospital Parkway	L01964	Houston		08/02/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200604529
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 22, 2006

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Notice of Emergency Cease and Desist Order on Samuel Silva, M.D.

Notice is hereby given that the Department of State Health Services (department) ordered Samuel Silva, M.D. (registrant-R30010-000) of Fort Worth to cease and desist using the Universal x-ray unit until the entrance exposure radiation level is within regulatory limits.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200604620
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 23, 2006

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Notice of Public Hearings Schedule for Development and Review of Block Grant Funds

Under the authority of the Preventive Health Amendments of 1992 (see 42 United States Code §§300w et.seq), the Department of State Health Services (department) is making application to the U.S. Public Health Service for funds to continue the Preventive Health and Health Services Block Grant (PHHSBG) during federal fiscal year (FFY) 2007. Provisions in the Act require the chief executive officer of each state to annually furnish a description (a state plan) of the intended use of block grant funds in advance of each FFY and to furnish a description of revisions made during the fiscal year. A proposal of this description is to be made public within each state in such a manner as to facilitate comments.

In FFY 2007, six activities are proposed to be funded under the block grant. These include sexual assault prevention and crisis services, border health and colonias, behavioral risk factor surveillance system, trauma registry, local health departments, and Health Service Regions.

The FFY 2006 plan is being revised due to a reduction in funding. The revised FFY 2006 plan replicates what is being proposed in the FFY 2007 plan.

The PHHS Block Grant award for FFY 2006 was $4,043,000. Of this amount, $510,620 was required to be used for sexual assault prevention and crisis services.

The department has prepared the following schedule for the development and review of the revised FFY 2006 State Plan and the FFY 2007 State Plan for the PHHSBG. In September of 2006, the department will hold public hearings in four Health Service Regions (HSRs):

September 18, 2006

Health Service Region 7, 1100 West 49th Street, Room K-100, Austin, Texas, 4:00 - 6:00 p.m.

September 19, 2006

Health Service Region 8, 7430 Louis Pasteur, Room 130, San Antonio, Texas, 10:00 a.m.

September 19, 2006

Health Service Region 4/5 North, 1517 West Front Street, Room 257, Tyler, Texas, 4:00 - 6:00 p.m.

September 20, 2006

Health Service Region 9/10, 401 East Franklin, Room 250, El Paso, Texas, 3:00 - 5:00 p.m.

Following these hearings, the department will summarize and consider the impact of the public comments received. The department will then notify the public of the availability of a published summary of these hearings. In October of 2006, the department will prepare the final revised FFY 2006 State Plan and the final FFY 2007 State Plan for the PHHSBG and forward it to the federal government.

Please note that the department will continuously conduct activities to inform recipients of the availability of services/benefits, the rules and eligibility requirements, and complaint procedures. Written comments regarding the PHHSBG may be submitted through September 27, 2006, to Martha McGlothlin, Block Grant Coordinator, Community Preparedness Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199, or via e-mail at martha.mcglothlin@dshs.state.tx.us. For further information, call (512) 458-7111, extension 6376.

TRD-200604619
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 23, 2006

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Texas Department of Housing and Community Affairs

2006 State of Texas Public Hearing Schedule on Affordable Housing, Community Services, and Community Development Activities

The Texas Department of Housing and Community Affairs (TDHCA) announces the hearing schedule for thirteen public hearings to gather public comment on the following planning documents and program rules:

• 2007 State of Texas Low Income Housing Plan and Annual Report (including 2006-2007 Colonia Action Plan and 2007 Texas State Affordable Housing Corporation Action Plan)

• 2007 State of Texas Consolidated Plan: One-Year Action Plan

• TDHCA Compliance Monitoring Policies and Procedures

• Energy Assistance Rules

• Community Services Block Grant Rules

• Emergency Shelter Grants Program Rules

• Housing Tax Credit (HTC) Qualified Allocation Plan and Rules (QAP)

• Housing Trust Fund (HTF) Program Rules

• Multifamily Bond Program Rules

• HOME, HTC, and HTF Affordable Housing Needs Score

• HOME, HTC, and HTF Regional Allocation Formula

• TDHCA Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines

TDHCA is required to submit the State of Texas Low Income Housing Plan and Annual Report (SLIHP) annually in accordance with §2306.072 of the Texas Government Code. The document offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. It reviews TDHCA's housing programs, current and future policies, resource allocation plan to meet state housing needs, and reports on 2006 performance.

TDHCA is required to submit the State of Texas Consolidated Plan: One-Year Action Plan (OYAP) in accordance with 24 CFR 91.320. This document reports in the intended use of program year 2007 funds for four US Department of Housing and Urban Development programs: Community Development Block Grant, Emergency Shelter Grant, HOME Investment Partnerships, and Housing Opportunities for Persons with AIDS programs.

The comment period for the 2007 SLIHP and 2007 OYAP will run from September 13, 2006, through October 12, 2006. These documents will be available at www.tdhca.state.tx.us.

For all other items, the public comment period will run from September 15, 2006, through October 12, 2006. These documents will be available at www.tdhca.state.tx.us.

Public comment may also be provided in writing via: [MAIL] TDHCA DPPA, P.O. Box 13941, Austin, TX 78711-3941, [FAX] (512) 469-9606, or [E-MAIL] info@tdhca.state.tx.us.

Region 1: Panhandle Regional Planning Commission, 3rd Floor Conference Room

415 W. 8th St., Amarillo

Time: Wednesday, September 27, 2006, 12:00 p.m.

Region 2: Brownwood City Hall

501 Center Ave., Brownwood

Time: Wednesday, October 4, 2006, 12:00 p.m.

Region 3: Dallas Public Library, Dallas West Room

1515 Young St., Dallas

Time: Wednesday, September 27, 2006, 11:00 a.m.

Region 4: Tyler Junior College, West Campus Room 110

1530 SSW Loop 323, Tyler

Time: Wednesday, September 27, 2006, 5:30 p.m.

Region 5: South East Texas Regional Planning Commission

2210 Eastex Freeway, Beaumont

Time: Wednesday, October 4, 2006, 5:30 p.m.

Region 6: Houston City Hall

901 Bagby, Houston

Time: Thursday, October 5, 2006, 11:00 a.m.

Region 7: Joe C. Thompson Conference Center, Second Floor Room 210

2405 Dedman Dr., Austin

Time: Monday, October 2, 2006, 5:30 p.m.

Region 8: Brazos Valley Council of Governments, Brazos B Room

3991 East 29th St., Bryan

Time: Thursday, September 28, 2006, 11:00 a.m.

Region 9: Bazan Library

2200 W. Commerce St., San Antonio

Time: Friday, September 22, 2006, 11:00 a.m.

Region 10: Omni Bayfront Hotel

900 North Shoreline Blvd., Corpus Christi

Time: Thursday, September 21, 2006, 3:30 p.m.

Region 11: Harlingen Public Library, Auditorium

410 76th Dr., Harlingen

Time: Tuesday, October 10, 2006, 11:30 a.m.

Region 12: Permian Basin Regional Planning Commission

2910 LaForce Blvd., Midland

Time: Thursday, October 5, 2006, 11:00 a.m.

Region 13: El Paso City Council Chambers, 2nd Floor

2 Civic Center Plaza, El Paso

Time: Thursday, September 28, 2006, 11:00 a.m.

For more information on the hearings, contact the TDHCA Division of Policy and Public Affairs at (512) 475-3976.

Individuals who require a language interpreter for the hearing should contact Michael Lyttle at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados. Individuals who require auxiliary aids or services should contact Gina Esteves, ADA-Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days prior to the scheduled hearing so that appropriate arrangements can be made.

TRD-200604655
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 23, 2006

Notice of Public Hearing

Multifamily Housing Revenue Bonds (East Tex Pines Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Francis Elementary School, 14815 Lee Road, Houston, Harris County, Texas 77032, at 6:00 p.m. on September 19, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $13,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to ST Moritz Partners LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 250-unit multifamily residential rental development to be located at 6200 Greens Road, Houston, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200604374
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 21, 2006

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Villas at Henderson Place) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Cleburne High School, 1501 Harlin Drive, Cleburne, Texas 76033, at 6:00 p.m. on September 21, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $8,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Cleburne Villas Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 140-unit multifamily residential rental development, of which a portion of the units will be for seniors, to be located at approximately 1648 W. Henderson Street, Johnson County, Texas. A physical address has not been assigned by Johnson County or the City of Cleburne. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941 Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200604656
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 23, 2006

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Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by AMERICAN FAMILY HOME INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Amelia, Ohio.

Application for incorporation to the State of Texas by CATAWBA INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Columbia, South Carolina.

Application to change the name of AMERICAN RE-INSURANCE COMPANY to MUNICH REINSURANCE AMERICA, INC., a foreign fire and/or casualty company. The home office is Princeton, New Jersey.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the Texas Register publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200604659
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 23, 2006

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Notice of Open Meeting

The Commissioner of Insurance will hold an open meeting under Docket No. 2650 at 10:00 a.m. on September 20, 2006, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider proposed manual rates for all types and classes of risks written by the Texas Windstorm Insurance Association (TWIA) and submitted by TWIA pursuant to Article 21.49 §8(h)(2).

Copies of the TWIA proposed manual rate filing for both commercial and residential risks are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, TX 78701 during regular business hours. For further information or to request copies of the filing, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0806-13).

Written comments on the filing may be submitted to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, TX 78714-9104 prior to the hearing on September 20, 2006. An additional copy of the comments must be submitted to Philip O. Presley, Chief Actuary, P.O. Box 149104, MC 105-5F, Austin, TX 78714-9104. Interested persons may also present written and/or oral comments related to the filing at the open meeting.

This notification is made pursuant to the Insurance Code Article 21.49, which requires notification in the Texas Register of the TWIA proposed manual rate filings for all types and classes of risks and exempts the proceeding from Chapter 40 of the Insurance Code and Chapter 2001 of the Government Code.

TRD-200604362
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 18, 2006

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Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2651 on September 19, 2006 at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas, to consider a petition to designate an area in Harris County bounded on the east by State Highway No. 146, on the west by State Highway No. 288, on the south by the Harris County/Galveston County border, and on the north by Loop 610 and State Highway No. 225 as a catastrophe area eligible for windstorm and hail insurance coverage through the Texas Windstorm Insurance Association (Association). On July 13, 2006, the association presidents of Marina Bay Condominiums, Lakeside Townhomes Council of Co-Owners, and The Point at Egret Bay Condominiums, representing approximately 330 residents, joined in a petition to the Commissioner to include the requested area as a catastrophe area for the purpose of area residents and businesses becoming eligible for windstorm and hail insurance coverage through the Association. According to the petition, the request is based on the following factors: (i) as a result of increased intensity and frequency of hurricanes in the Gulf of Mexico, the storm surge impact areas have been expanded to include areas west of Highway No. 146 in Harris County and now include the petitioners' locations as well as many other similar properties; (ii) recent windstorm damage in Texas has resulted in the departure of all available insurance providers except for one in this area; and (iii) the unplanned and significant increase for windstorm and hail coverage started in February of this year, and in one case retroactive to last November, has been from 125% to 128%, resulting in the inability to prepare next year's expense plans and required maintenance dues. According to the petition, as a result of these factors, a total of 165 residences in the petitioning associations no longer have windstorm and hail insurance coverage reasonably available.

The Association was created by the Texas legislature in 1971 and is composed of all property insurers authorized to transact property insurance in Texas. The purpose of the Association is to provide windstorm and hail insurance coverage to residents and businesses in designated catastrophe areas that are unable to obtain such coverage in the voluntary market. Since its inception, the Association has provided this coverage to residents and businesses of fourteen coastal counties, including Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy. Since 1996, as a result of the Commissioner's designation of additional catastrophe areas, pursuant to the Insurance Code Article 21.49 §3(h), residents and businesses in Harris County in the cities of Seabrook, La Porte, and Morgan's Point have been eligible to apply for windstorm and hail coverage through the Association; and since 1997, residents and businesses in those parts of the cities of Shoreacres and Pasadena in Harris County located east of State Highway No. 146 have been eligible to apply for windstorm and hail coverage through the Association.

The Commissioner is authorized pursuant to the Insurance Code Article 21.49 §3(h) to designate a city or a part of a city or a county or part of a county as a catastrophe area upon determination, after notice of not less than ten days and a hearing, that windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property in that city or a part of that city or county or a part of that county that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms.

A copy of the full text of the petition is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference Number P-0806-14). All interested parties are invited to attend the hearing and testify for or against the petition.

TRD-200604408
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 21, 2006

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Texas Lottery Commission

Instant Game Number 744 "Fabulous Fortune"

1.0 Name and Style of Game.

A. The name of Instant Game No. 744 is "FABULOUS FORTUNE". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 744 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 744.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, $$ SYMBOL, GOLD BAR SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000, or $50,000.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 744 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
DOUBLE DOLLAR "$$" SYMBOL	DBLE
GOLD BAR SYMBOL	AUTO
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$

$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Retailer Validation Code--Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 744 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize--A prize of $50.00, $100, or $500.

I. High-Tier Prize--A prize of $1,000, $5,000, or $50,000.

J. Bar Code--A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 (thirteen) digit number consisting of the three (3) digit game number (744), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 744-0000001-001.

L. Pack--A pack of "FABULOUS FORTUNE" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "FABULOUS FORTUNE" Instant Game No. 744 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FABULOUS FORTUNE" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins prize shown for that number. If a player reveals a "GOLD BAR" play symbol, the player wins prize shown instantly. If a player reveals a double dollar "$$" symbol play symbol, the player wins DOUBLE the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than three (3) identical non-winning prize symbols will appear on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. The "$$" (doubler) play symbol will only appear on intended winning tickets as dictated by the prize structure.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "FABULOUS FORTUNE" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket, provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FABULOUS FORTUNE" Instant Game prize of $1,000, $5,000, or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FABULOUS FORTUNE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FABULOUS FORTUNE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FABULOUS FORTUNE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 744. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 744 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	880,000	6.82
$10	400,000	15.00
$15	160,000	37.50
$20	140,000	42.86
$50	80,000	75.00
$100	19,450	308.48
$500	550	10,909.09
$1,000	150	40,000.00
$5,000	26	230,769.23
$50,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.57. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 744 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 744, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200604531
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 22, 2006

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Instant Game Number 760 "Holiday Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 760 is "HOLIDAY CASH". The play style is "match 3 of 6".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 760 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 760.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, and $1,000.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 760 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU

E. Retailer Validation Code--Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 760 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of $1.00, $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize--A prize of $50.00 or $100.

I. High-Tier Prize--A prize of $1,000.

J. Bar Code--A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 (thirteen) digit number consisting of the three (3) digit game number (760), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 760-0000001-001.

L. Pack--A pack of "HOLIDAY CASH" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 and 005 will be on the top page; ticket 006 and 010 on the next page; etc.; and tickets 246 and 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "HOLIDAY CASH" Instant Game No. 760 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HOLIDAY CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals three (3) matching dollar amounts, the player wins that dollar amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified; and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more matching play symbols on a ticket.

C. No more than 2 pairs of matching play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY CASH" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket, provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOLIDAY CASH" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "HOLIDAY CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "HOLIDAY CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 760. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 760 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,296,000	9.26
$2	576,000	20.83
$4	384,000	31.25
$5	96,000	125.00
$10	72,000	166.67
$20	48,000	250.00
$50	11,100	1,081.08
$100	2,500	4,800.00
$1,000	250	48,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 760 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 760, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200604532
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 22, 2006

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Texas Board of Professional Engineers

Draft Policy Advisory Opinion Regarding Record (As-Built) Drawings

The Texas Board of Professional Engineers (Board) is given authority to issue advisory opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act, or interpretations regarding a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

Pursuant to that requirement, the Board hereby presents the following Draft Policy Advisory Opinion regarding Record (As-Built) Drawings. The Board initiated this request due to a number of outside requests via email and phone calls regarding the engineering aspects of Record Drawings. The Board developed the following Draft Policy Advisory Opinion on Record Drawings which was written with stakeholder comments and is posted here for public comment. The Board has not yet ratified the opinion. Comments received during the posting period will be considered for inclusion in the final version of the policy advisory opinion that will be presented to the Board for ratification during a regularly scheduled meeting of the Board. Comments should be directed to:

Texas Board of Professional Engineers

1917 IH 35 South

Austin, Texas 78741

Attention: Policy Advisory Staff

Or by e-mail to: peboard@tbpe.state.tx.us

Executive Summary: The Texas Board of Professional Engineers (Board) frequently gets asked questions regarding record (as-built) drawings for construction projects. The Board has determined pursuant to the Policy Advisory Opinion process outlined in the Texas Administrative Code, Title 22, Part 6, Chapter 131, Subchapter G, these questions can be answered based on the present statute and rules. Signing and sealing record (as-built) drawings is not generally an issue for public works projects since the Texas Engineering Practice Act (Act) requires a professional engineer to design and provide direct supervision of the engineering construction. Some projects may start out as a private construction project and then are later annexed by a municipality and become a public works project (water treatment facilities, subdivision infrastructure, etc). The city then requires that the record drawings be signed and sealed by a professional engineer. If the professional engineer was not involved in the construction phase of the project, they are very limited in what they can sign and seal. An engineer will only be able to attest to the accuracy of the drawings based on what they can actually confirm or observe after the fact. An engineer may include a caveat on the drawings with a notation stating their limited responsibility.

Statutory language: §1001.407. Construction of Certain Public Works

The state or a political subdivision of the state may not construct a public work involving engineering in which the public health, welfare, or safety is involved, unless:

(1) the engineering plans, specifications, and estimates have been prepared by an engineer; and

(2) the engineering construction is to be performed under the direct supervision of an engineer.

Public works: The Board has identified specific examples of projects that are considered public works. The attorney general has issued several opinions that include the following definition:

The term "public works" embraces all construction and improvements, ordinarily of a fixed nature, designed for public use, protection or enjoyment. Clearly included among public works are bridges, school buildings, waterworks, dams, sewers, canals and channels, levees and sea walls, wharves and piers, irrigation, reclamation and drainage projects, and highways and streets.

An engineer is required for the direct supervision of construction on all public works projects. These engineers are allowed to seal as-built drawings. Public works projects that do not meet the exemptions listed in the statute require the involvement of a licensed professional engineer.

What construction drawings would be exempted under the Act? In Subchapter B of the Act there are several sections that provide exemptions from the licensing requirements when working on building projects. Specifically, §1001.053 contains some specific exemptions from the Act for public works projects, depending on the type of project and monetary value. Also, §1001.056 lists specific building projects for the private sector when an engineer is not required to be involved with the building project. Therefore, projects of this type would not require the involvement of a license professional engineer.

Discussion: The Board frequently gets asked whether record (as-built) drawings need to be sealed by a professional engineer. There are situations in which an engineer may not be involved in the direct supervision of a construction project, but an official may require the "as-built" plans to be sealed. An engineer will only be able to attest to the accuracy of the drawings with a notation as to what he can actually confirm or observe. An engineer should not seal a record drawing that represents changes that he did not actually observe during construction. The Board does not consider documentation of what was actually constructed to be engineering. An engineer may include a caveat on such drawings with a notation, similar to that shown below, as to what he can actually confirm based on the information he can obtain through observation, interviews, samples, and other useful information. As an alternative he may choose to seal and sign a cover letter stating what he has determined to be "as-built" through his own research and attach it to the drawings or plans. The caveat should include the location of the signed and sealed design drawings. An example caveat may be written as follows:

This record drawing is a compilation of a copy of the sealed engineering drawing for this project; modified by addenda, change orders, and information furnished by the contractor. The information shown on the record drawings that was provided by the contractor or others not associated with the design engineer cannot be verified for accuracy or completeness. The original sealed drawings are on file at the offices of....

Conclusion: Professional engineers should inform their clients that an engineer is required to be involved in direct supervision of the engineering construction for public works projects as noted in the statute, §1001.407. Engineers should recommend to their clients that a licensed professional engineer be engaged to provide direct supervision of construction projects for private works that affect human health and safety. There are a number of projects that may become public through annexation or other means such as underground utilities and infrastructure, which directly affect public health and safety. In addition, development that occurs near urban areas needs professional engineering involvement during construction since the municipality will later require sealed record drawings. Licensed professional engineers are not obligated to seal record drawings. An engineer has the option of sealing the drawings with or without the caveat but can only seal what they personally observed or supervised.

TRD-200604352
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: August 18, 2006

Texas Department of Public Safety

Request for Grant Proposals - Local Emergency Planning Committee (LEPC) Hazardous Materials Emergency Preparedness (HMEP) Grants

INTRODUCTION: The Governor's Division of Emergency Management (GDEM), acting for the State Emergency Response Commission (SERC), is requesting proposals for Local Emergency Planning Committee (LEPC) Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to Cities/Counties representing LEPCs to further their work in hazardous materials transportation emergency planning.

DESCRIPTION OF ACTIVITIES: LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for communities relating to chemicals in their use, storage, or transit. The U. S. Department of Transportation has made grant money available to enhance communities' readiness for responding to hazardous materials transportation incidents. A grant may be used by an LEPC in various ways, depending on a community's needs.

ELIGIBLE APPLICANTS: Each proposal must be developed by an LEPC, the membership of which is recognized by the SERC, in cooperation with county and/or city governments. The proposal must be approved by a vote of the LEPC. Each LEPC shall arrange for a city or county to serve as its fiscal agent for management of any and all money awarded under this grant.

CERTIFICATION: The fiscal agent must provide certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or authorization to commit funds from the city as appropriate.

BUDGET LIMITATIONS: Total funding for these grants is dependent on the amount granted to the state from the U. S. Department of Transportation. No less than seventy-five percent of the money granted to the state for planning will be awarded to LEPCs. This is an annual grant award, which will be issued through FY 2007. Grants will be awarded based upon population, hazardous materials risk, need, and cost-effectiveness as judged by GDEM. GDEM will fund eighty percent of the total project cost. Twenty percent of the project cost must be borne by the grantee. Approved in-kind contributions may be used to satisfy this contribution. LEPCs must maintain the same level of spending for planning as an average of the past two years, in addition to the grant.

EXAMPLES OF PROPOSALS:

Development, improvement, and implementation of the emergency plans required under EPCRA, as well as exercises, which test the

emergency plan. Improvement of emergency plans may include hazard analysis as well as response procedures for emergencies involving transportation of hazardous materials including radioactive materials.

An assessment to determine flow patterns of hazardous materials within a State, between a State and another State or Indian Country, and development and maintenance of a system to keep such information current.

An assessment of the need for regional hazardous materials emergency response teams.

An assessment of local response capabilities.

Conducting emergency response drills and exercises associated with emergency response plans.

Technical staff to support the planning effort. (Staff funding under planning grants cannot be diverted to support other requirements of EPCRA.)

Public outreach about hazardous materials training issues such as community protection, chemical emergency preparedness, or response.

Any other planning project related to the transportation of hazardous materials approved by GDEM.

CONTRACT PERIOD: Grant contracts begin as early as November 1, 2006, and end October 31, 2007.

FINAL SELECTION: The GDEM shall review the proposals. SERC Subcommittee on Planning will make the final selection. The State is under no obligation to award grants to all applicants.

APPLICATION FORMS AND DEADLINE: The "Request for Proposals and Application Package" should be sent via certified/registered mail or other private mail delivery service, requiring a signature to the Texas Department of Public Safety, Governor's Division of Emergency Management, P. O. Box 4087, Austin, Texas 78773-0225. An application may be requested by calling DEM at (512) 424-5985. The original and four copies of the completed application must be received at the above address by 5:00 P.M. on October 31, 2006. For more information, please call (512) 424-5985.

TRD-200604353
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: August 18, 2006

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 8, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001-66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Northland Cable Television, Incorporated to Amend its State-Issued Certificate of Franchise Authority, Project Number 33046 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33046.

TRD-200604355
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 11, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Northland Cable Ventures, LLC to Amend its State-Issued Certificate of Franchise Authority, Project Number 33087 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33087.

TRD-200604360
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 18, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Comcast of Texas I, L.P. to Amend its State-Issued Certificate of Franchise Authority, Project Number 33101 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33101.

TRD-200604534
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 18, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Comcast of Texas II, L.P. to Amend its State- Issued Certificate of Franchise Authority, Project Number 33102 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33102.

TRD-200604536
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 18, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Comcast of Plano, LP. to Amend its State-Issued Certificate of Franchise Authority, Project Number 33103 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33103.

TRD-200604535
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2006

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 11, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001-66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Cable for a State-Issued Certificate of Franchise Authority, Project Number 33069 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area includes the cities of Smithville and Niederwald in the State of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33069.

TRD-200604357
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2006

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 16, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Northland Cable Properties, Inc. for a State-Issued Certificate of Franchise Authority, Project Number 33086 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area footprint includes the counties of Montgomery, Liberty, and Harris, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33086.

TRD-200604359
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2006

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on August 8, 2006, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Incorporated (GVTC) to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries of Sattler Exchange (GVTC) and New Braunfels Exchange (AT&T). Docket Number 33053.

The Application: The minor boundary amendment is being filed to realign the boundary between GVTC's Sattler exchange and AT&T's New Braunfels exchange to allow GVTC to provide local exchange telephone service to all current and future lots of the River Chase subdivision, and AT&T to serve the remainder of the River Oaks subdivision. AT&T has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33053.

TRD-200604356
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2006

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Notice of Application for Amendment to a Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 17, 2006, for an amendment to a certificate of operating authority (COA), pursuant to §§54.101 - 54.105 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Sugar Land Telephone Company for an Amendment to its Certificate of Operating Authority, Docket Number 33098 before the Public Utility Commission of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 7, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33098.

TRD-200604411
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2006

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application for sale, transfer, or merger filed with the Public Utility Commission of Texas on August 17, 2006, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.101, 51.010, 52.002, and 54.051 - 54.054 (Vernon 1998 & Supplement 2005) (PURA).

Docket Style and Number: Application for Sale, Transfer, or Merger of Texas Windstream, Incorporated, Docket Number 33097.

The Application: On August 17, 2006, Texas Windstream, Incorporated filed an application to report the separation of the wireline business of Alltel Corporation, (Texas Windstream's parent) and subsequent merger of the wireline business with Valor Communications Group, Incorporated as the surviving entity in the merger. As the surviving entity in the merger, Valor Communications Group, Incorporated has been renamed Windstream Corporation. As a result of the separation and merger, Texas Windstream is now a wholly-owned subsidiary of Windstream Corporation.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 33097.

TRD-200604412
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2006

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application for sale, transfer, or merger filed with the Public Utility Commission of Texas on August 17, 2006, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.101, 51.010, 52.002, and 54.051 - 54.054 (Vernon 1998 & Supplement 2005) (PURA).

Docket Style and Number: Application for Sale, Transfer, or Merger of Windstream Sugar Land, Incorporated, Docket Number 33099.

The Application: On August 17, 2006, Windstream Sugar Land, Incorporated filed an application to report the separation of the wireline business of Alltel Corporation, (Windstream Sugar Land's parent) and subsequent merger of the wireline business with Valor Communications Group, Incorporated as the surviving entity in the merger. As the surviving entity in the merger, Valor Communications Group, Incorporated has been renamed Windstream Corporation. As a result of the separation and merger, Windstream Sugar Land is now a wholly-owned subsidiary of Windstream Corporation.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 33099.

TRD-200604413
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2006

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 15, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Common Pointe Networks of Texas, LLC for a Service Provider Certificate of Operating Authority, Docket Number 33076 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private Line, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 7, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33076.

TRD-200604358
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2006

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Public Notice of Workshop and Request for Comments on Rulemaking to Amend P.U.C. Substantive Rule §26.223, Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding its rulemaking to amend P.U.C. Substantive Rule §26.223 - Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates, on Monday, October, 16, 2006, at 10:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. This rulemaking project was established to make necessary changes to harmonize the current rule with Public Utility Regulatory Act (PURA) Chapter 65, Subchapter E, to expedite requests from COA/SPOCOA holders to lower their intrastate switched access rates and make other changes as necessary to reflect the changing conditions of the wholesale switched access market. Project Number 33060, *Rulemaking Project to Amend P.U.C. Substantive Rule §26.223, Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates* has been established for this proceeding. Prior to the workshop, the commission requests interested persons file comments to the following questions:

Subsection (d)(1) - Methodology

1. Does the methodology outlined in subsection (d)(1)(A-D) need to be modified to incorporate the mandatory reduction of intrastate switched access rates? If yes, please provide specific recommendations and support on which portions should be modified or deleted.

Subsection (d)(2) - Recalculation

1. Does the time period for the recalculation of the statewide intrastate switched access rates need to be adjusted to compensate for the mandatory reduction of switched access rates?

2. Does the effective date of November 1 need to be changed to compensate for the mandatory reduction of switched access rates? Please suggest a date and provide rationale for your suggestion.

Subsection (f)(1) and (2) - Requirement for CCN holder's compliance submissions

1. Should the commission continue to require CCN holder's to file actual originating and terminating minutes of use (MOUs)? Should the intrastate MOUs continue to be collected from the most recent 12-month period? If not, please provide an explanation and an alternative solution (e.g., use six months of actual data and annualize).

2. Should the deadline for CCN holder's compliance filings continue to be June 1st? If no, please provide an explanation and an alternative date?

Subsection (g)(2) and (g)(3) - Requirement of COA/SPCOA holder's compliance submissions

1. Should changes to subsections (g)(2) and (g)(3) be made that would expedite the time schedule for implementation of changes to the rates for COA/SPCOA switched access charges?

2. Should subsections (g)(2) and (g)(3) be modified to allow reduction of COA/SPCOA access charges to go into effect earlier than the 75 days in the current rule? If so, what time period? If not, why not?

General Comments

1. Are there any other changes that you would suggest to this rule that address recent changes in the telecommunications market that affect the wholesale provisioning of switched access service? Please be specific and provide support for the suggested changes.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 21 days of the date of publication of this notice. Parties are also encouraged to submit proposed rule language along with their responses to the questions above. All responses and proposed rule language should reference Project Number 33060. Five business days prior to the workshop the commission shall make a copy of the draft rule available in Central Records and the PUC website under Project Number 33060. Parties should be prepared to discuss the draft rule at the October 16 workshop.

The commission request that persons planning on attending the workshop register by phone with James Kelsaw, Infrastructure Reliability Division, (512) 936-7338.

Questions concerning the workshop or this notice should be referred to John Costello, Senior Policy Analyst, Infrastructure Reliability Division, (512) 936-7377 or James Kelsaw, Senior Network Analyst, Infrastructure Reliability Division, (512) 936-7338. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200604660
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2006

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Texas Department of Savings and Mortgage Lending

Alternative Thrift Charters

A Report to the 79th Legislature From the Texas Department of Savings and Mortgage Lending, December 2006, Submitted to the Governor, the Lieutenant Governor, Speaker of the House of Representatives, and the Members of the 79th Texas Legislature.

Executive Summary

Texas is blessed to have one of the best business climates in the country in addition to some the most flexible financial statutes under which our financial institutions operate. Due to a myriad of financial mergers and acquisitions initiated by out-of-state acquirers over the past ten to fifteen years, Texas has lost many home-based banking and thrift institutions. This study is designed to consider alternative thrift charters not presently offered in Texas to determine the feasibility and possibility of offering such charters to assist in attracting de novo Texas-based financial institutions, as well as inviting existing out-of-state financial institutions to base their operations in our great state.

With the "Industrial Loan Company" thrift charter (ILC) being the only existing U.S. financial institution charter type not offered in Texas presently, this study focuses on its history, charter components, regulatory experiences in those states in which it exists, and comparative analyses with existing charters now available.

Considering the very high profile that the ILC charter has recently received with the Wal-Mart ILC application in Utah and the massive public and industry opposition causing Congressional attention, special attention was given to the impact of offering such a charter in Texas. In other states that offer the ILC charter, a "non-bank" control ownership is permissible (Wal-Mart, Target, etc., as an example). This is met with significant objection from the traditional financial institution community as well as the U.S. Congress in that it allows the mixing of commerce with the banking business. If ever offered in Texas, the ILC ownership most likely would need to be restricted to a "bank" control structure, as defined by the Federal Reserve, to address this concern.

After carefully comparing the various existing charters to the ILC type, it has been determined that the presently offered Texas State Savings Bank thrift charter (SSB) is as viable and flexible as any ILC charter with only one exception. That exception would be the 50-65% Qualified Thrift Lender's Test (QTL) requiring SSBs to maintain a significant percentage of the bank's assets in residential real estate loans to further the thrift charter purpose of promoting homeownership. If the thrift has an Office of Thrift Supervision Holding Company, the required percentage is 65%. If no holding company exists or the holding company was regulated by the Federal Reserve Bank, the Texas Savings Bank charter requires at least a 50% QTL. The SSB charter essentially allows the same, and possibly more services than an ILC charter would.

In summary, it is the recommendation of this study that Texas does not have the need for an additional type of financial institution charter. Even if it were possible to restrict the ownership to banks only, the future opportunity would exist for non-bank interests to create an unfavorable "hybrid" thrift charter to the detriment of our existing financial institutions. In addition, the SSB charter now available is considered to be equally attractive, if not more so, than an ILC. It is recommended that Texas continue to heavily market our existing financial institution charters, modernizing them legislatively when needed.

Purpose of the Study

In the recent past, Texas was home base to many state and federally chartered banks, savings institutions, and other financial providers. It was considered a financial center for national and international financial matters. Since the 1980s, there have been an unprecedented number of mergers and acquisitions in the financial sector resulting in Texas losing its "home base" status. Many of the homegrown financial institutions who had either formed their institutions locally or had chosen to base their operations in Texas have merged or sold to other institutions not based in Texas. Concerns continue over why this has occurred, and moreover, what can be done about this migration of home-based Texas financial institutions. Exportation of statewide deposits and importation of out-of-state rates/pricing by institutions based out of Texas but operating in Texas are additional concerns raising awareness of the need to make Texas attractive to those who have interest in forming a financial institution or re-locating to Texas as a home base from other states. One obvious reason Texas has lost home-based financial institutions by acquisition of larger out-of-state institutions is the fact that it has been, and continues to be a very attractive consumer and commercial marketplace with substantial business opportunities. Those Texas-based institutions that have sold typically receive extremely attractive offers to sell their franchises, and those lucrative solicitations are normally justified by those future opportunities found in the Texas marketplace.

In the 79th Regular Session of the Texas Legislature, House Bill 955 was introduced by Chairman Burt Solomons of the House Financial Institutions Committee. This bill, signed by Governor Rick Perry, went into effect on September 1, 2005. For reasons and concerns previously stated, this bill was a "modernization" of the Texas Finance Code. In Article 3, Department of Savings and Mortgage Lending, Section 3.05 of the Finance Code, an amendment was passed stating that the Texas Savings and Mortgage Lending Commissioner shall study the desirability and feasibility of developing alternative thrift charters, including special purpose charters, and shall issue a report, including findings and legislative recommendations, to the legislature not later than December 31, 2006.

Texas industry stakeholders (financial institution trade groups) were asked to assist in this report by conveying their constituents'/members' desires, concerns, and opinions. Where applicable, their official positions are stated within the report on certain issues outlined.

The report will focus on a particular type of thrift charter never before offered in Texas and presently existing in a few other states (Industrial Loan Charter, or "ILC"). There are some restrictions on a federal level with the National Bank Holding Company Act and how it applies to Texas, and there is adverse consensus from the "banking" community for Texas offering such a thrift charter. There continues to be some limited interest from a few financial groups with either experience in this type charter in other states, or curiosity in a "special" business plan that may be well suited for this type of limiting charter. Those who have voiced concerns adverse to Texas offering this particular type of thrift charter have had their concerns addressed in this report with specific "minimum" requirements for this type charter eligibility. The basic opposition includes but is not limited to the invitation to the "big box" banks (Wal-Mart, Target, etc.) and the eligibility of non-banks to receive such a charter. To address this basic concern, one recommendation outlined in the report is to only allow eligibility of ownership to those who presently have, and for some minimum period of time have had, a federally insured financial institution or bona fide financial holding company based in Texas.

All concerns received, pro and con, are outlined in this report.

Scope of the Study

House Bill 955 became effective September 1, 2005 with the following requirement:

SECTION 3.03. The commissioner shall study the desirability and feasibility of developing alternative thrift charters, including special purpose charters, and shall issue a report, including findings and legislative recommendations, to the legislature no later than December 31, 2006.

The only other thrift charter available in the United States that is not presently offered by the State of Texas is commonly referred to as an Industrial Loan Corporation (ILC). The scope of this study focuses on that specific charter.

History of Regulatory Supervision of Industrial Loan Companies

(The following section draws heavily on information gathered by the FDIC- FDIC, "The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective," Supervisory Insights, June 25, 2004, http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum04/industrial_loans.html (June 1, 2006).)

Industrial loan companies have been in existence since 1910 when Arthur J. Morris established Fidelity Savings and Trust Company in Norfolk, Virginia. This was the first of many Morris Plan Companies which became known as industrials, industrial banks, or thrift and loan companies (ILCs). The original purpose of formation was to benefit the

industrial workers as prospective borrowers. In the beginning, these institutions were not supervised by federal regulators, but were chartered and supervised by the states. These early institutions operated somewhat like small finance companies offering loans to wage earners who could not otherwise obtain credit. In most cases, the interest rates were higher than "market" rates due to a higher credit risk profile. The loans typically were not collateralized but were endorsed or "guaranteed" by two or more creditworthy individuals who knew and vouched for the borrower.

State laws prohibited some of the early Morris Plan institutions to receive deposits. Instead they issued certificates of investment or indebtedness and avoided the term, "deposit". Because of deposit prohibition, the Federal Deposit Insurance Corporation (FDIC) initially determined that they were not eligible for federal deposit insurance. That subsequently changed when state law started permitting these institutions to include the word "bank" in their name. Even those which did not use the word "bank" in their name could then apply for and receive federal deposit insurance given the fact the same charter was used.

Thrift certificates were exempt from Regulation Q rate restrictions leading the ILCs to typically offer higher interest rates than insured banks on their deposits. After 1932, even with this attractive competitive edge, there was some reluctance from some prospective customers to do business with those ILCs that did not have FDIC coverage. In 1975, Utah formed the Industrial Loan Guaranty Corporation, a state deposit fund to afford those ILCs without federal insurance coverage a competitive "equalizer" of deposit insurance. Shortly afterwards, California commenced a similar state insurance fund for its ILCs. Assessments to the ILCs funded these insurance funds. Utah's fund was depleted after two ILC failures (1978-1980) as was California's after a large ILC failed there. ILCs' problems compounded when Regulation Q was repealed thereby allowing banks to pay higher interest rates. This forced the ILCs to operate with much more narrow margins to remain competitive.

This ILC environment posed serious challenges for the onset of federal supervision in the early 1980s. The Garn-St.Germain Depository Institutions Act authorized federal insurance for investment certificates in 1982. This legislation also required that ILCs were to be similarly regulated as commercial banks in order to apply for deposit insurance. Some states followed suit and changed their laws to require FDIC insurance for the ILCs as a charter condition. There were many ILCs that could not qualify for or meet the standards for deposit insurance coverage, and as a result had to be sold or were liquidated. Those same standards exist today--the financial history and condition of the applicant, the adequacy of the applicant's capital structure, future earnings potential, character of management, convenience and needs of the communities served, whether the corporate powers were consistent with the Federal Deposit Insurance Act, among other requirements.

In the mid 1980s, commercial companies became interested in "non-bank" charters because they were neither subject to the requirements of the Bank Holding Company Act (BHCA), nor holding company supervision and oversight. The BCHA defined a bank as an entity that both made commercial loans and accepted demand deposits. If an institution did not perform both of these functions, it was a "non-bank" under the BHCA, but was a "bank" for other purposes such as being eligible for federal deposit insurance. While a flurry of non-bank applications were expected, the passage of Competitive Equality Banking Act (CEBA) in 1987 dampened the expected application activity. CEBA generally made all banks that were FDIC insured, "banks" under the BHCA. CEBA also grandfathered the exclusion from the BHCA of the parent companies of existing non-bank banks, provided certain conditions were met. Nevertheless, there remained interest in the ILC charter. In 1988 the first commercially owned ILC applied for and received FDIC deposit insurance. Once this precedent was set, more applications followed.

Much like the FDIC assuming the role of the discontinued Federal Savings and Loan Insurance Corporation (FSLIC) in the aftermath of the savings and loan industry failures, they encountered an industry that was unaccustomed to federal banking mentality and oversight. The ILCs tended to operate as an extension of their commercial parent and not as an autonomous banking entity. Therefore, a rather vertical "banking" learning curve existed for the ILC management teams and boards. To insure that the ILCs operated safely and soundly and in compliance with all state and federal regulations as well as have proper insulations from the parent, the state and federal regulatory authorities asserted a strong emphasis on certain "non-standard" requirements to obtain the ILC charter such as:

The organizers will appoint a board of directors, the majority of whom will be independent of the bank's parent company and its affiliates. (Ibid)

The bank will appoint and retain knowledgeable, experienced and independent executive officers. (Ibid)

The bank will develop and maintain a current business plan, adopted by the board of directors, that is appropriate to the nature and complexity of the activities conducted by the bank and separate from the business plan of the affiliated companies; (Ibid)

To the extent management, staff, or other personnel or resources are employed by both the bank and the bank' parent company or any affiliated entities, the bank's board of directors will ensure that such arrangements are governed by written contracts giving the bank authority and control necessary to direct and administer the bank's affairs. (Ibid)

In addition to these standard requirements and as in any bank level review of an institution with affiliates, an examination would include an assessment of the bank's corporate structure, how the bank interacts with its affiliates, and a thorough review of the financial risks inherent with the affiliated relationship. If shared management is involved, a set procedure and policy is required to address clear lines of delineation of duties, defined compensation arrangements, avoidance of conflicts of interest, reporting lines, authorities granted, etc. Written agreements are required of any affiliated service provided requiring the same terms and conditions as would be applied to non-affiliates as well as a contingency plan for any "critical" services performed by an affiliate. The FDIC and many state regulators also have the ability to examine transactions with the affiliate to ensure the relationship effect is acceptable.

ILC Failures

It is apparent that the ILCs entered the federal regulatory oversight world in the midst of financial difficulty. The vast number of ILCs entering this environment was basically entities that operated similar to small finance companies paying high rates of interest and making risky loans. The history of ILC failures is made up of these smaller ILCs.

From 1985 through 2003, 21 ILCs failed (see TABLE ONE). Nineteen of those were operated as finance companies with average assets of $23 million. The banking crisis of the 1980s and early 1990s took its toll on these small ILCs. Most of them were California charters. Eight of these failures occurred within five years of receiving FDIC insurance with the others occurring within six to eight years of receiving FDIC coverage.

The two largest failures are the most recent. Pacific Thrift and Loan and Southern Pacific Bank were holding company banks. The latter was initially chartered in 1982 as Southern Thrift and Loan and was uninsured until 1987 with a name change to Southern Pacific Bank. It

should be noted that both failures were due to ineffective risk management and poor credit quality.

It is difficult to make a historical failure "reasoning" statement when comparing the ILC failures with other financial institution charter failures simply because all things were not equal. Most of the failures have been relatively small institutions and were relative newcomers to federal supervision. Also, severely deteriorating economic conditions with real estate downturns were occurring when most entered the federal supervision arena that undoubtedly contributed to a high incidence of failure.

Of all chartered ILCs in Utah, eight of the original charters were subsequently insured by the FDIC. Recently, as in other states, a new ILC industry has been born in Utah with commercial companies either buying charters or organizing de novos. The supervisory strategies and standards the FDIC and the state of Utah applied to these new operations have been tailored to fit each individual institution. This has, without doubt, contributed to the newer ILCs' success and provides much better assurance of them operating in a safe, sound, and compliant manner than history would indicate.

Table One[1]

Table 1. Most Failing ILCs Operated as Small Finance Companies: ILC Failures 1985–2003						
Institution	**Location**	**Year of Failure**	**Resolution Assets ($000)**	**Loss to the Bank**	**Loss Ratio % Insurance Fund ($000)**	**Comments**
Orange Coast Thrift & Loan	Los Alamitos, CA	1986	13,966	5,352	38.3	Insured 1985
Whittier Thrift & Loan	Whittier, CA	1987	15,206	3,263	21.5	Insured 1985
Colonial Thrift & Loan	Culver City, CA	1988	26,761	4,600	17.2	Insured 1986
First Industrial Bank	Rocky Ford, CO	1988	12,489	6,696	53.6	Insured 1987
Metropolitan Industrial Bank	Denver, CO	1988	12,434	4,729	38.0	Denied 1972 & 1982; insured 1984
Westlake Thrift & Loan	Westlake Village, CA	1988	55,152	7,745	14.0	Insured 1985
Lewis County Savings & Loan	Weston, WV	1989	3,986	405	10.2	Insured 1986
Federal Finance & Mortgage	Honolulu, HI	1991	7,732	878	11.4	Insured 1985
Landmark Thrift & Loan	San Diego, CA	1991	16,638	2,208	13.3	Insured 1984
Assured Thrift & Loan	San Juan Capistrano, CA	1992	48,226	21,028	43.6	Insured 1985
Huntington Pacific Thrift & Loan	Huntington Beach, CA	1992	40,476	17,368	42.9	Insured 1985
North American Thrift & Loan	Corona Del Mar, CA	1992	21,276	0	0	Insured 1989
Statewide Thrift & Loan	Redwood City, CA	1992	9,636	2,341	24.3	Insured 1986
Brentwood Thrift & Loan	Los Angeles, CA	1993	12,920	3,323	25.7	Insured 1987
Century Thrift & Loan	Los Angeles, CA	1993	31,876	9,553	30.0	Insured 1985
City Thrift & Loan	Los Angeles, CA	1993	39,383	17,697	44.9	Insured 1986
Regent Thrift & Loan	San Francisco, CA	1993	35,751	1,450	4.1	Insured 1987
Los Angeles Thrift & Loan	Los Angeles, CA	1995	23,388	6,067	25.9	Insured 1990
Commonwealth Thrift & Loan	Torrance, CA	1996	11,547	5,640	48.8	Insured 1987
Pacific Thrift & Loan	Woodland Hills, CA	1999	127,342	42,049	33.0	Insured 1988
Southern Pacific Bank	Torrance, CA	2003	904,294	90,000	10.0	Estimated figures. Denied 1985; insured 1987
Total ILC Failures 21; by state: CA 17; CO 2; HI 1; WV 1			$1.5 billion	$252 million	17%*	
*Weighted average						

[1] (FDIC, "The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective," *Supervisory Insights*, June 25, 2004, http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum04/industrial_loans.html (June 1, 2006)

ILCs Today

There are seven states, as of June 30, 2005, with actively chartered ILCs as detailed in the following chart by state and total assets: (FDIC collects, corrects, updates, and stores Reports of Condition and Income data submitted by all insured national and state nonmember commercial banks and state-chartered savings banks on a quarterly basis. This "call report" information is extensively used by the bank regulatory agencies in their daily offsite bank monitoring activities. Reports of Condition and Income data are the only publicly available source of information regarding the status of U.S. banking system.)

State	Number of Charters	Total Assets (in thousands) by State as of June 30, 2005
Utah	31	$114,231,696
California	15	$ 14,860,972
Nevada	5	$ 10,460,049
Colorado	4	$ 495,323
Minnesota	2	$ 52,229
Hawaii	1	$ 621,977
Indiana	1	$ 61,693
Total	**59**	**$140,783,939**

Although grandfathered states with the ability to offer ILC charters are restricted and the number of charters has remained fairly stable, recent history has seen a significant increase in the total asset base. This asset growth has been concentrated in the four largest ILCs all with assets over $10 billion and accounting for 74% of total industry assets (Ibid). The three largest are all domiciled in Nevada and the fourth in California. Each one of these four largest ILCs can be categorized as to their mission or purpose as being embedded in organizations whose activities are predominantly financial in nature which is the most common one of the four broadly defined business models ILCs are generally grouped into:

(33 Institutions) Predominately Financial in Nature- Institutions that are embedded in organizations whose activities are predominantly financial in nature, or within the financial services units of larger corporate organizations. These institutions may serve a particular lending, funding, or processing function within the organization. Lending strategies can vary greatly, but, within a specific institution, are often focused on a limited range of products, such as credit cards, real estate mortgages, or commercial loans. Corporate strategies play a larger role in determining funding strategies in these cases, with some institutions periodically selling some or all outstanding loans to the parent organization. Parent assessments of funding options across all business units frequently determine the specific tactics at the ILC level. A few institutions restrict themselves to facilitating corporate access to the payment system or supporting cash management functions, such as administering escrowed funds.

(14 Charters) Non-Financial- Institutions that directly support the parent organizations' distinctly commercial activities. These institutions largely finance retail purchases of parent company products, which can range from general merchandise to automobiles, truck stop activities, fuel for rental car operations, and heating and air conditioning installations. Loan products might include credit cards, lines of credit, and term loans. Funding is generally limited to wholesale or money center operations, borrowings, or other options from within the parent organization.

(8 Charters) Community Focused- Institutions that are operated as community-focused institutions, including stand-alone institutions and those serving a community niche within a larger organization. These institutions often provide credit to consumers and small to medium-sized businesses. In addition to retail deposits (many ILCs offer NOW accounts), funding sources may include commercial and wholesale deposits, as well as borrowings. Institutions that operate within a larger corporate organization may also obtain funding through the parent organization.

(4 Charters) Large Corporate Service Oriented Organizations- Independent institutions that focus on specialty lending programs, including leasing, factoring, and real estate activities. Funding sources for this relatively small number of institutions may include retail and commercial deposits, wholesale deposits, and borrowings. (FDIC, *The Future of Banking: The Structure and Role of Commercial Affiliations*, July 16, 2003, http://www.fdic.gov/news/conferences/future_bennett.html (June 1, 2006).)

Generally, the authority of industrial loan companies and industrial banks (collectively, ILCs) to engage in activities is determined by the laws of the chartering state. The authority granted to an ILC may vary from one state to another and may be different from the authority granted to commercial banks. Except for offering demand deposits, an ILC generally may engage in all types of consumer and commercial lending activities and all other banking activities permissible for banks in general.

Core ILC functions are traditional financial activities that can generally be engaged in by institutions of all charter types. The exception would be institutions organized and chartered as limited-purpose institutions, which generally focus on credit card or trust activities. (Ibid)

The following chart, based on Table 2 of the summer, 2004 edition of the FDIC's online publication, Supervisory Insights, has been modified to insert a column pertaining to the powers of a Texas state savings bank in a comparative format with commercial banks and ILCs.

Comparison of Powers Shows Key Differences between Texas State Savings Banks, Commercial Banks and ILC Charters			
Powers	**Texas State Savings Bank**	**State Commercial Bank That Is a BHCA Bank**	**Industrial Loan Company (or Industrial Bank) That Is Not a BHCA Bank**
1. Ability to accept demand deposits	Yes	Yes	Varies with the particular state. Where authorized by the state, demand deposits can be offered if either the ILCs assets are less than $100 million or the ILC has not been acquired after August 10, 1987
2. Ability to export interest rates	Yes	Yes	Yes
3. Ability to branch interstate	Yes	Yes	Yes
4. Ability to offer full range of deposits and loans	Yes	Yes	Yes, including NOW accounts, but see the first entry above regarding demand deposit accounts
5. Authorized in every state	No	Yes	No. ILCs currently are chartered in seven states*
6. Examination, supervision, and regulation by federal banking agency	Yes	Yes	Yes
7. FDIC may conduct limited scope exam of affiliates	Yes	Yes	Yes
8. Golden Parachute restrictions apply	Yes	Yes	Yes, to the institution; no, to the parent
9. Cross Guarantee liability applies	Yes	Yes	No
10. 23A & 23B, Reg. O, CRA apply	Yes	Yes	Yes
11. Anti-tying restrictions apply	Yes	Yes	Yes
12. Parent** subject to umbrella federal oversight	Yes	Yes	No
13. Parent** activities generally limited to banking and financial activities	No***	Yes	No
14. Parent** could be prohibited from commencing new activities if a subsidiary depository institution has a CRA rating that falls below satisfactory	Yes	Yes	No
15. Parent** could be ordered by a federal banking agency to divest of a depository institution subsidiary if the subsidiary becomes less than well capitalized	Yes	Yes	No
16. Full range of enforcement actions can be applied to the subsidiary depository institutions if parent fails to maintain adequate capitalization	Yes	Yes	Yes
17. Control owners who have caused a loss to a failed institution may be subject to personal liability	Yes	Yes	Yes

*California, Colorado, Hawaii, Indiana, Minnesota, Nevada, and Utah.

**Parent, with respect to a state commercial bank, refers to a bank holding company or financial holding company subject to supervision by the Federal Reserve. Under a proposed rule, broker-dealers who own ILCs may soon be able to choose consolidated supervision by the Securities and Exchange Commission. See "Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities," 62 Fed. Reg. 62872 (proposed November 6, 2003, to be codified at 17 C.F.R. Part 240).

*** Parent, with respect to a Texas State Savings Bank, refers to either a unitary diversified thrift holding company subject to supervision by the Office of Thrift Supervision or a bank holding company subject to supervision by the Federal Reserve.

Note: NOW = negotiable order of withdrawal; CRA = Community Reinvestment Act

Items 12 through 15 of the previous chart are the heart of differences that distinguish ILCs from other FDIC insured depositories. At its core is the absence of a federal regulator with explicit chartering and umbrella supervisory authority over the holding company. Parent activities are not generally limited to banking and financial activities and limited enforcement power to prohibit parent from entering into new activities or divest of current activities if deemed necessary. The FDIC imposes on the holding company regulatory oversight referred to as a "bank-centric" supervision. In the absence of explicit authority over the operations of the parent holding company, bank-centric supervision seeks to isolate the insured depository from risks posed by the parent or its affiliates by imposing limitations at the time of issuing insurance of deposits, reviewing any transactions with the insured depository, and enforcing regulations applicable to all holding companies. However, when there is no relationship with an affiliate, any reputation or other operational risks may not be detected. In contrast, the OTS and FRB are granted consolidated supervisory authority over the parent holding company and may review all banking and nonbanking activities conducted directly or indirectly through subsidiaries and affiliates with only some limitations related to reasonable cause and material adverse affect on the insured depository. This is further elaborated in the following chart:

Comparison of Explicit Supervisory Authorities of the FDIC, Board, and OTS[1]

Description of Explicit Supervisory Authority	FDIC[a]	Board	OTS
Examine the relationships, including specific transactions, if any, between the insured institution and its parent or affiliates.	●[b]	●[b]	●[b]
Examine beyond specific transactions when necessary to disclose the nature and effect of the relationship between the insured institution and the parent or affiliate.	●[b]	●[b]	●[b]
Examine the parent or any affiliate of an insured institution, including a parent or affiliate that does not have any relationships with the insured institution or concerning matters that go beyond the scope of any such relationships and their effect on the depository institution.	○	●[b]	●[b]
Take enforcement actions against the parent of an insured institution.	⊙[bc]	●[b]	●[b]
Take enforcement actions against affiliates of the insured institution that participates in the conduct of affairs of, or acts as agent for, the insured institution.	⊙[b]	●[b]	●[b]
Take enforcement action against any affiliate of the insured institution, even if the affiliate does not act as agent for, or participate in the conduct of, the affairs of the insured institution.	○	●[b]	●[b]
Compel the parent and affiliates to provide various reports such as reports of operations, financial condition, and systems for monitoring risk.	⊙[b,d]	●[b]	●[b]
Impose consolidated or parent-only capital requirements on the parent and require that it serve as a source of strength to the insured depository institution.	⊙[d]	●	●
Compel the parent to divest of an affiliate posing a serious risk to the safety and soundness of the insured institution.	⊙[e]	●	●

- ● Explicit authority
- ⊙ Less extensive authority
- ○ No authority

Sources: GAO analysis of the supervisory authorities of the FDIC, Board, and OTS.

[a]FDIC may examine an insured institution for interaffiliated transactions at any time and can examine the affiliate when necessary to disclose the transaction and its effect on the insured institution.

[b]The authority that each agency may have regarding functionally regulated affiliates of an insured depository institution is limited in some respects. For example, each agency, to the extent it has the authority to examine or obtain reports from a functionally regulated affiliate, is generally required to accept examinations and reports by the affiliates' primary supervisors unless the affiliate poses a material risk to the depository institution or the examination or report is necessary to assess the affiliate's compliance with a law the agency has specific jurisdiction for enforcing with respect to the affiliate (e.g., the Bank Holding Company Act in the case of the Board). These limits do not apply to the Board with respect to a company that is itself a bank holding company. These restrictions also do not limit the FDIC's authority to examine the relationships between an institution and an affiliate if the FDIC determines that the examination is necessary to determine the condition of the insured institution for insurance purposes.

[c]FDIC may take enforcement actions against institution-affiliated parties of an ILC. Atypical ILC holding company qualifies as an institution-affiliated party. FDIC's ability to require an ILC holding company to provide a capital infusion to the ILC is limited. In addition, FDIC may take enforcement action against the holding company of an ILC to address unsafe or unsound practices only if the holding company engages in an unsafe or unsound practice in conducting the affairs of the depository institution.

[d]FDIC maintains that it can achieve this result by imposing an obligation on an ILC holding company as a condition of insuring the ILC. FDIC also maintains it can achieve this result as an alternative to terminating insurance. FDIC officials also stated that the prospect of terminating insurance may compel the holding company to take affirmative action to correct violations in order to protect the insured institution. According to FDIC officials, there are no examples where FDIC has imposed this condition on a holding company as a condition of insurance.

[e]In addition to an enforcement action against the holding company of an ILC in certain circumstances (see footnote b), as part of prompt corrective action the FDIC may require any company having control over the ILC to (1) divest itself of the ILC if divestiture would improve the institution's financial condition and future prospects, or (2) divest a nonblank affiliate if the affiliate is in danger of becoming insolvent and poses a significant risk to the institution or is likely to cause a significant dissipation of the institution's assets or earnings. However, the FDIC generally may take such actions only if the ILC is already significantly undercapitalized.

[1] "Industrial Loan Corporations: Recent Asset Growth and Commercial Interest Highlight Differences in Regulatory Authority", *Report to the Honorable James A. Leach, House of Representatives,* GAO-05621, United States Government Accountability Office, Washington D.C, September 2005, page 35.

SML has direct supervisory authority over the activities of a savings bank holding company. Under §97.006(a) and §79.44, each holding company and each subsidiary of a holding company is subject to examination as the Commissioner may require. Further, although the department may approve the creation of a state chartered holding company, that entity must seek additional approval from either the OTS or FRB to act as a bank holding company and submit to the regulatory oversight of one of these federal regulators. SML is comfortable with this level of oversight and has a longstanding working relationship with each of these federal regulators and does not recommend any structure with less regulatory oversight at either the bank or holding company level.

Having stated that no current or anticipated insured depository charter offered by the State of Texas would deviate from the consolidated supervisor model of regulatory oversight at the parent holding company level, then the only aspect of change or enhancement in seeking an alternative charter choice would be in the operations of the insured depository itself. To determine what additional powers and/or flexibility might be sought, the Department conducted a comparative analysis of charter choices currently available in Texas as shown in Exhibit I.

This has led us to reach the same conclusion on any form of alternative charter that the General Accounting Office reached during its review of ILCs. "During our review, we did not identify any banking activities that were unique to ILCs that other insured depository institutions were not permitted to do." GAO report previously cited. With the automatic parity provisions contained in the Texas state savings bank charter, there is sufficient flexibility to allow these charters to compete on a level playing field with any other charter.

EXHIBIT I

FINANCIAL INSTITUTION CHARTER COMPARISON

POWERS & REGULATORY ENVIRONMENT

Characteristic	Texas State Bank	National Bank	Texas Savings Bank	Texas S&L	Federal S&L
POWERS (General)	+General Banking-Broader than National Bank (Automatic parity provision) +TX Business Law Expands Corporate Authorities	Similar to State Banks (No automatic parity provision)	Same as Federal Savings Association, State S&L, and State or National Bank (Automatic parity provision)	Same as Federal Savings Association (Automatic parity provision) + Real estate development through subsidiary (with FDIC approval) or Holding Co.	Same as State S&L (No automatic parity provision) + Real estate development through subsidiary or Holding Co.
DISTINCTION (Positive)	+ Locally Oriented + Access to Regulator + Less Costly	+ National Regulation + Single Regulator	+ Locally Oriented + Accessible Regulator + Less Costly + SSB is a "Bank" under federal law	+ Locally Oriented + Accessible Regulator + Less Costly	+ Nationwide Regulation + Single Regulator
DISTINCTION (Negative)	- Multiple Regulators (State & Primary FRB, FDIC or FRB) - Varied Interstate Regulation	- National Orientation - Regulator Less Accessible - More Costly	- Multiple Regulators (State & Primary Federal - FDIC) - Varied Regulation Interstate	- Multiple Regulators (State & Federal - OTS & FDIC) - Varied Regulation Interstate	- National Orientation - Regulator Less Accessible - More Costly
REGULATOR	Banking Commissioner & FDIC or FRB	OCC	S&L Commissioner & FDIC or FRB	S&L Commissioner, OTS & FDIC	OTS Primary & FDIC Backup
MUTUAL FORM PERMITTED	No	No	Yes	Yes	Yes
FDIC INSURANCE SAIF v. BIF	Bank Insurance Fund (BIF)	Bank Insurance Fund (BIF)	BIF - New Charter SAIF - If Converting SAIF Institution	Savings Association Insurance Fund (SAIF)	Savings Association Insurance Fund (SAIF)
FRB MEMBERSHIP	Optional	Required	Optional	Not Eligible	Not Eligible
FHLB MEMBERSHIP	Optional	Optional	Optional	Optional	Required
ACTIVITIES	**State Law May Exceed National Banks with Approval of FDIC**	**Federal Banking Law**	**State Law May Exceed National Banks with Approval of FDIC + Parity With Federal Savings Associations**	**State Law May Exceed National Banks with Approval of FDIC + Parity With Federal Savings Associations**	**Federal Thrift Law**

INVESTMENTS

Characteristic	Texas State Bank	National Bank	Texas Savings Bank	Texas S&L	Federal S&L
Commercial Concentration Lending Guideline [Concentration of credit would be a concern]	100% of Tier 1 Capital in Loans to an Industry Group	100% of Tier 1 Capital in any Commercial Loan	40% of Assets in Non-Real Estate Commercial Loans; 100% RE Commercial Loans	10% of Assets in Non-Real Estate Commercial Loans; 100% RE Commercial Loans	20% of Assets in Non-Real Estate Commercial Loans (half in Small Business Loans); 100% RE Commercial Loans
Loans to One Borrower Limit	25% or 40%* of Capital & Certified Surplus (excluding ALLL + Undivided Profits) [*If statutory and regulatory exceptions apply.]	15% or 25%* of Capital & Surplus (including ALLL) [*If statutory and regulatory exceptions apply.]	Same as National Banks, parity with State Banks + Greater Federal Savings Association limits [At least $500,000]	Same as Federal Savings Association through parity provision	Greater of National Bank authority, or $500,000 + 30% of Capital and Surplus for loans to develop domestic residential housing units, with Director approval
Investment in Subsidiary Corporation (Service Corporation) and Financial Subsidiaries	+ 10% of Capital and Certified Surplus in a Service Corporation, and no more than the Bank's total equity capital in all Service Corporations. + Operating subsidiaries that engage in activities the Bank could engage in directly are not subject to this investment limitation.	+ 10% of Capital and Surplus in a Service Corporation, and no more than 5% of the Bank's total assets in all Service Corps. + Operating subsidiaries that engage in activities the Bank could engage in directly are not subject to this investment limitation.	+ 10% of total assets. + Operating subsidiaries that engage in activities the savings bank could engage in directly are not subject to this investment limitation.	+ 10% of total assets. + Operating subsidiaries that engage in activities the savings association could engage in directly are not subject to this investment limitation.	+ 2% of total assets, or 3% if the additional percent serves primarily community development, etc. + Operating subsidiaries that engage in activities the savings association could engage in directly are not subject to this investment limitation.
Service and Financial Subsidiary Corporation Activities & Investments Permitted	+ May engage in any activity that can be engaged in directly by a Bank or Bank Holding Company including securities underwriting.	+ May engage in any activity that can be engaged in directly by a Bank or Bank Holding Company including securities underwriting.	+ May engage in loan origination and servicing, real estate acquisition, development and investment, real estate brokerage, securities brokerage services on a riskless principal basis, and insurance brokerage. + Also, parity with federal savings associations, state and national banks.	+ May engage in loan origination and servicing, real estate acquisition, development and investment, real estate brokerage, securities brokerage services on a riskless principal basis, and insurance brokerage. + Also, parity with federal savings associations.	+ May engage in loan origination and servicing, services to financial institutions, real estate services, acquisition, improvement and maintenance of real estate, securities brokerage services on a riskless principal basis, and insurance brokerage.

Thriftness Test: HOLA (Home Owners Loan Act) - QTL (Qualified Thrift Lender) Test	Not Applicable	Not Applicable	Yes - **50% if no OTS Holding Company or 65%** of Assets as pursuant to 12 U.S.C. §1467a(m) (defined as Cash, U.S. Government or Agency Securities, or Real Estate Related Lending, **plus** Consumer, Credit Card, and Small Business Lending);	Yes - Same as Federal Savings Association	Yes - **65%** of Assets as pursuant to 12 U.S.C. §1467a(m) (defined as Cash, U.S. Government or Agency Securities, or Real Estate Related Lending, plus Consumer, Credit Card, and Small Business Lending)
or **IRS Test for Domestic Building and Loan**			**or** IRS Rule as defined under Federal S&L column. NOTE: Most community banks qualify without any change to their lending or investment portfolio.		**or** **60%** of Assets in IRS defined Qualified Assets of Cash, U.S. Government or Agency Securities, Premises or Real Estate Related Lending and Investments [26 U.S.C., (Chapter 79)§7701(a)(19) 1986 Internal Revenue Code]

The Bank Holding Company Act and Alternative Charters

The viability of an alternative financial charter must include consideration of the Bank Holding Company Act (codified at 12 U.S.C. §1841 et seq., and hereafter the "BHC Act"). Specifically, one of the fundamental attractions of certain charters, such as that of industrial loan corporations (ILCs) has been the historical exemption of these institutions from the Bank Holding Company Act.

Definitions and Fundamental Concepts of the BHC Act. Section 2(a) of the BHC Act defines a bank holding company as a company that owns or controls a bank (12 USC 1841(a)). Section 2(c) of the BHC Act defines a bank as an insured institution as defined in Section 3(h) of the Federal Deposit Insurance Act (12 USC 1813(a)) or as an institution which both accepts demand deposits and makes commercial loans.

Section 4 of the BHC Act (12 USC 1842(a)) provides that it is unlawful to become a bank holding company or for a company to acquire control of a bank without prior approval of the Federal Reserve Board ("FRB"). Thus, entities which seek to become a bank holding company must file an application with the FRB and are subject to FRB jurisdiction.

Perhaps the key to the issue of alternative charters and the BHC is found in Section 4 of the BHC Act (12 USC §1843(c)). This section restricts a company from conducting any business other than that of banking or activities which the FRB determines are closely related to banking. This recognizes the long established principle of separating the business of banking from that of general commerce and prohibits manufacturing and other non-financial companies from engaging in the business of banking.

The Industrial Loan Company Exception. The one historic exception to this wall of separation between commerce and banking has been the traditional exception for industrial loan companies. Prior to 1987, these entities were not "banks" as defined in the BHC Act, and therefore, a non-financial company could acquire and operate an industrial loan company.

In 1987, Congress amended both the BHC Act and the Federal Deposit Insurance Act. As amended an industrial loan company is specifically included in the definition of "bank" under FDIA Section 3(h). The result of this amendment is that any company which owns an industrial loan company is now considered a bank holding company subject to FRB oversight and, as a consequence, non-financial companies may not acquire or operate an industrial loan company. However, there is an important exception to this general provision. Section 2(h) of the BHC Act (12 USC §1841(c)(2)(H)) excepts from the Bank Holding Company certain industrial loan companies chartered in certain states which had statutes to grant charters to ILCs prior to March 5, 1987. Although a number of states provided for ILCs prior to this magic date, today two states remain popular havens for companies that desire to acquire or to charter ILCs which are prohibited from becoming or which do not wish to become a bank holding company and, therefore, subject to FRB oversight. Those states are Nevada and Utah.

Texas Alternative Charter Choices and the BHC Act. As a result of this analysis, it is clear that any alternative charter for a depository institution in Texas would be a "bank" for purposes of the BHC Act. Therefore, any such entity owning or controlling such a charter would be required to become a bank holding company. Since a bank holding company may not engage in non-financial related businesses, any Texas charter would be subject to the traditional separation of commerce and banking functions.

Conclusions and Recommendations

Texas, in crafting the State Savings Bank (SSB) charter, considered similar charters in other states and elements of financial modernization. Texas stakeholders and agency staff collaborated in the structuring of the SSB resulting in the creation of a very flexible charter which retains necessary elements of safety and soundness issues.

The ILC charter, in those states that offer it, has attracted many "non-bank" principals. This has been, and continues to be, a very contentious issue in the banking industry which strongly opposes mixing commerce with banking. As thrift regulators, the SML agrees with that concern. Although the FDIC and other states' regulators seem to have adequate oversight and control of these "non-bank" ILC operators, there exists the possibility of opening Texas' doors to future changes and legislative evolution that may allow such non-bank operations to charter an ILC if such a charter were offered. Therefore, we recommend against such offerings. Furthermore, it is recommended that Texas continue to market its SSB charter, extolling the flexibility and attractive elements therein.

ADDENDUM

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April 14, 2006

The Honorable Danny Payne
Commissioner
Texas Department of Savings and Mortgage Lending
2601 North Lamar Blvd.
Austin, TX 78705

RE: ILC Charters in Texas

Dear Commissioner Payne:

At your request, we are pleased to submit our comments relative to the exploration of creating an alternative charter in Texas similar to the existing Industrial Loan Company (ILC) charter in existence in several states.

The Independent Bankers Association of Texas has had a long and steadfast opposition to the blending of banking and commerce. One of the features of an ILC is the ability of commercial firms to breach this wall, if even for a limited purpose.

This issue is manifesting itself in the current debate regarding Wal-Mart's attempt to get into the banking business through the ILC loophole. Our comment letter on this troublesome application is attached.

We are unable, at this time, to imagine a circumstance where the objectives of a legitimate business plan could not be met with the charter options available at either the state or federal level. Additionally, we have observed the evolution of various charters over the years to react to changes in consumer demand, technology, regulatory fiat, legislative mandate and/or economic influences. While seemingly innocuous, a limited purpose charter *a la* the ILC has the potential to become something much more insidious over time.

Unless there is compelling evidence to the contrary, we would be very much opposed to any legislative initiative to introduce a limited purpose charter in Texas. Indeed, we are presently exploring legislative options to prohibit ILC entities from branching into Texas.

Thank you for the opportunity to comment, and for the excellent work you and your agency do for the industry and the citizens of Texas.

Sincerely,

Christopher L. Williston, CAE
President and CEO

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March 22, 2006

Mr. John F. Carter
Regional Director
Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square, Suite 2300
San Francisco, CA 95105

RE: Comments Regarding FDIC Application #20051977; Wal-Mart Application for Insurance and Industrial Bank Charter

Dear John:

As you are aware, one of the longstanding "line in the sand" issues with the Independent Bankers Association of Texas is the separation of banking and commerce. Additionally, you are aware that a majority of our member banks have offices in rural areas – many of which have been negatively impacted and forever changed by the appearance of a Wal-Mart store in their respective communities. As such, you will not be surprised to know that we are adamantly and unconditionally opposed to the Wal-Mart application to enter the banking business with the benefit of federal deposit insurance.

After a cursory perusal of the surprisingly large number of comment letters opposing this application, I have chosen to concentrate on a few key points, although we are concerned generally with the ILC charter and the inconsistent regulatory treatment thereof.

Community banks continue to operate in a highly competitive environment, with many of its primary competitors enjoying economies of scope and scale, and even outright favorable treatment regarding regulatory oversight and taxation. The trends toward consolidation of the banking and financial services industry are clear, and in our assessment, quite disturbing. It is our opinion that this seemingly small step into the breakdown of the wall between banking and commerce will only accelerate this trend, and provide fewer and less flexible choices for the American consumer.

We operate in a dynamic industry. The only constant is the expectation and realization of change. The ILC charter, just like the credit union charter and the savings and loan charter in the 1980's, continues to evolve. We have serious reservations regarding the stated future intentions of Wal-Mart, and feel strongly that the temptation to enter a full range of banking products and services will be something that they will not be able to resist. That notwithstanding, control of the payments system, or even a substantial portion thereof, by the world's largest retailer should send a chill down every rational person's spine.

Mr. John F. Carter
Page 2

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While our concerns are clearly centered around the potentially cataclysmic impact on the community banking industry, we also have grave concerns about the availability of credit to small businesses in rural areas. Imagine if you will a "Wal-Mart" bank, having purchased or "priced out of business" the only other bank in a small town. If indeed a small grocery store, hardware store, clothing boutique, auto repair/tire store or other small business is still surviving and in need of banking services, their only local alternative could well be their primary competitor – Wal-Mart. How uncomfortable and indeed ludicrous would it be to ask these small business borrowers to provide the last three years of income tax returns, personal and business financial statements, inventory and receivable reports, business plans, etc. to their primary competitor? And how likely would it be for that competitor to make an unbiased decision based upon the highest and best use of capital?

Our financial system is the envy of the world, and one of key – although shrinking as a percentage of the whole – components is a vibrant and adaptive community banking industry. We firmly believe that if Wal-Mart's application to enter the banking business is approved, history will prove that such was an ill-advised decision that started a dramatic change in our economic infrastructure – and not at all for the better.

As always, we appreciate you considering our comments and opinions, and are grateful for the FDIC's willingness to seriously contemplate the significant and long-lasting implications of this troubling application.

Sincerely,

Christopher L. Williston, CAE
President and CEO

COLLECTIVELY CREATING VALUE FOR COMMUNITY BANKING

TRD-200604354
John Fleming
General Counsel
Texas Department of Savings and Mortgage Lending
Filed: August 18, 2006

♦ ♦ ♦

Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: **http://www.dot.state.tx.us**. Under Citizen, click on Hearings and Meetings, then click on Aviation Public Hearing; or contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 800-68-PILOT.

TRD-200604378
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Filed: August 21, 2006

♦ ♦ ♦

Texas Water Development Board

Notice of Public Hearing

An attorney with the Texas Water Development Board (Board) will conduct a public hearing beginning at 6:00 p.m. on October 2, 2006, in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701 to receive public comments on the draft of the 2007 State Water Plan in accordance with 31 TAC §358.3(a). The Board will consider adopting the draft 2007 State Water Plan at its regular Board meeting on November 14, 2006 at 11:00 a.m., at the same location.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the State Water Plan. In addition, persons may provide written comments on or before October 6, 2006 to Bill Roberts, Office of Planning, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711 or by e-mail to bill.roberts@twdb.state.tx.us.

Copies of the draft 2007 State Water Plan will be available for inspection in Room 426 of the Stephen F. Austin Building from the Water Resources Planning Division, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0853. A copy will also be available on the Board's web site at http://www.twdb.state.tx.us.

TRD-200604661
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: August 23, 2006

♦ ♦ ♦

September - December 2006 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents, rule review notices, and other documents. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices.*** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

Issue date	**Rules:** **12 Noon**	**Other Documents:** **12 Noon**
36 Friday, September 8	Monday, August 28	Wednesday, August 30
37 Friday, September 15	**Friday, September 1*	Wednesday, September 6
38 Friday, September 22	Monday, September 11	Wednesday, September 13
39 Friday, September 29	Monday, September 18	Wednesday, September 20
40 Friday, October 6 *Third Quarterly Index*	Monday, September 25	Wednesday, September 27
41 Friday, October 13	Monday, October 2	Wednesday, October 4
42 Friday, October 20	Monday, October 9	Wednesday, October 11
43 Friday, October 27	Monday, October 16	Wednesday, October 18
44 Friday, November 3	Monday, October 23	Wednesday, October 25
45 Friday, November 10	Monday, October 30	Wednesday, November 1
46 Friday, November 17	Monday, November 6	Wednesday, November 8
47 Friday, November 24	Monday, November 13	Wednesday, November 15
48 Friday, December 1	*Friday, November 17	*Monday, November 20
49 Friday, December 8	Monday, November 27	Wednesday, November 29
50 Friday, December 15	Monday, December 4	Wednesday, December 6
51 Friday, December 22	Monday, December 11	Wednesday, December 13
52 Friday, Decemb er 29	Monday, December 18	Wednesday, December 20

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).